

IN THE ARBITRATION UNDER CHAPTER 11  
OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND UNDER THE UNCITRAL ARBITRATION RULES  
BETWEEN

- - - - -	-x
	:
METHANEX CORPORATION,	:
	:
Claimant/Investor,	:
	:
and	:
	:
UNITED STATES OF AMERICA,	:
	:
Respondent/Party.	:
	:
- - - - -	-x

Volume 4

Thursday, June 10, 2004

The World Bank  
1818 H Street, N.W.  
MC Building  
Conference Room 13-121  
Washington, D.C.

The hearing in the above-entitled matter  
came on, pursuant to notice, at 9:05 a.m. before:

V.V. VEEDER, Q.C., President

PROF. W. MICHAEL REISMAN, Arbitrator

J. WILLIAM ROWLEY, Q.C., Arbitrator

Also Present:

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Tribunal Legal Secretary

MARGRETE STEVENS,  
Senior ICSID Counsel  
Tribunal Administrative Secretary

Court Reporter:

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1                   P R O C E E D I N G S

2                   PRESIDENT VEEDER: Well, good morning,  
3 ladies and gentlemen. This is day four of the main  
4 hearing, and we now turn to the U.S. motion to  
5 exclude certain evidence adduced by Methanex. And  
6 given that it's a U.S. motion, we hand the floor  
7 first to the United States.

8                   MS. MENAKER: Thank you.

9                   Mr. President, members of the Tribunal,  
10 the United States respectfully requests that all of  
11 the documents that originated in Mr. Vind's files  
12 be excluded from evidence in this arbitration.

13                  Methanex maintains that it obtained these  
14 documents by rummaging through a dumpster that was  
15 in the parking lot behind Mr. Vind's old offices.  
16 The manner in which these documents were even  
17 allegedly obtained warrants exclusion, and I quote  
18 from Justice Brennan's dissent in a U.S. Supreme  
19 Court case when he said, and I quote, Most of us, I  
20 believe, would be incensed to discover a meddler,  
21 whether a neighbor, a reporter, or a detective,

1 scrutinizing our sealed trash containers to  
2 discover some items of our personal lives, end  
3 quote.

4           He continued to say, and I quote again,  
5 Scrutiny of another's trash is contrary to commonly  
6 accepted notions of civilized behavior, end quote.  
7 And that is the case.

8           That is a citation from the Greenwood  
9 case, is a U.S. Supreme Court case, and I will at a  
10 break get you the exact citation for that.

11           The manner in which these documents were  
12 allegedly obtained is not envisioned by either the  
13 UNCITRAL Arbitration Rules or Articles 4 or 5 of  
14 the International Bar Association's rules on the  
15 gathering of evidence. Admitting such documents,  
16 documents of such dubious origin, in this case  
17 would undermine the integrity of international  
18 arbitration, and this Tribunal should wash its  
19 hands of these documents.

20           In any event, these documents were  
21 obtained illegally, and therefore, they should

1 certainly be excluded.

2           Methanex maintains, as I just said, that  
3 it received these documents through a private  
4 investigator who, in turn, hired another  
5 investigator, who retrieved or allegedly retrieved  
6 these documents from a dumpster that was located in  
7 the parking lot behind Regent International's  
8 former offices.

9           At first, Methanex claimed that this  
10 dumpster was located on private--on, excuse me,  
11 public property. Yesterday, its witnesses seemed  
12 to be claiming that, only that the dumpster was  
13 publicly accessible. Mr. Puglisi stated that there  
14 was the flow of traffic outside to and from the  
15 building, and that there was no restriction on who  
16 could enter the parking lot, and it was definitely  
17 publicly accessible. And thus, they maintained  
18 that this was legal under California law.

19           As has been the case throughout these  
20 proceedings, Methanex is wrong on both the facts  
21 and on the law.

1           First, let me discuss their witnesses, the  
2 testimony we heard yesterday. As we know, their  
3 witnesses could not even vouch for all of the  
4 documents that Methanex has sought to submit into  
5 evidence in this proceeding. Some of those  
6 documents were identified from Mr. Vind as having  
7 originated from his files, and yet, neither  
8 Mr. Puglisi nor Ms. Morisset could say that they  
9 had ever seen those documents before because no  
10 original for those documents has been located.

11           So, there is--

12           PRESIDENT VEEDER: Just to interrupt you  
13 now, Ms. Menaker, what particular tabs are you  
14 referring to when you say that, that the  
15 originals--

16           MS. MENAKER: The ones that are in the  
17 stack, the copies of the stack of originals when  
18 Methanex has listed are not yet located.

19           PRESIDENT VEEDER: As we understand it,  
20 Methanex has withdrawn those exhibits, those six  
21 exhibits.



1 MS. MENAKER: So, they are withdrawn?

2 Okay. Then I retract that statement, if those are  
3 withdrawn.

4 PRESIDENT VEEDER: I think if you leave  
5 those six aside, then I think your so-called  
6 originals have been found to match in one form or  
7 another all the copied exhibits that we have.

8 MS. MENAKER: That's correct, aside from  
9 those six documents.

10 PRESIDENT VEEDER: Thank you.

11 MS. MENAKER: The fact, however, that  
12 there were some documents for which no original has  
13 been found places some suspicion on the method in  
14 which these documents were gathered. There is no  
15 reason to assume that these documents were taken  
16 from a dumpster rather than from Mr. Vind's files  
17 in his office or the trash can in his office. We  
18 have no originals of those documents, and  
19 therefore, there is no reason for us to assume that  
20 the documents that Methanex still seeks to put into  
21 evidence were obtained in the manner in which they

1 alleged they were obtained.

2           Most importantly, however, neither of the  
3 witnesses that Methanex proffered yesterday has any  
4 personal knowledge as to how any of these documents  
5 were retrieved. Neither of those individuals  
6 personally retrieved any of the documents from  
7 Mr. Vind's premises or from the dumpster behind the  
8 building.

9           Neither of these witnesses claim to have  
10 ever been in California at Mr. Vind's offices or to  
11 have ever seen the premises from which these  
12 documents were taken. They have no personal  
13 knowledge on this topic whatsoever.

14           And moreover, much of the evidence that  
15 these--much of the testimony casts doubt on the  
16 conclusion that these witnesses would like you to  
17 draw from their testimony, and that is that these  
18 documents were taken from a dumpster behind  
19 Mr. Vind's offices.

20           ARBITRATOR ROWLEY: Could I just ask you  
21 to address the testimony of Ms. Morisset where she,

1 I believe, said something to the effect that the  
2 documents she received indicated that they may have  
3 come from a dumpster because they were stained with  
4 coffee and Coke and chewing gum. The reason I ask  
5 you that is because that seems to me direct  
6 testimony from her, which is supportive of the  
7 indirect testimony that they came from a dumpster.

8 MS. MENAKER: I agree that that testimony  
9 might supply evidence for the inference that those  
10 documents were found in the trash. However, that  
11 does not supply any type of confirmation as to how  
12 those documents were retrieved from the trash or  
13 where the trash was located. Those documents could  
14 have been in the trash in Mr. Vind's private  
15 office.

16 She doesn't--she didn't see how those  
17 documents were retrieved or from what trash they  
18 were retrieved. She certainly has never seen a  
19 dumpster behind Mr. Vind's office in a parking lot  
20 behind his office, so she has no knowledge that  
21 those documents were taken from that dumpster, and

1 that is the point that I was making.

2           Moreover, much of the testimony was  
3 questionable. Mr. Puglisi stated in his statement  
4 that the documents in question had been forwarded  
5 to him in a sealed box. We now know that there  
6 were at least, I believe, 88 shipments of documents  
7 that were sent to Mr. Puglisi, so there was no one  
8 sealed box of documents.

9           PRESIDENT VEEDER: I think that's an  
10 unkind reading, maybe, of his affidavit. I don't  
11 think he was indicating in his written affidavit,  
12 as he made clear in his oral testimony, that there  
13 was only one sealed box, but that's the way you're  
14 reading it, isn't it?

15           MS. MENAKER: That is the way I was  
16 reading it. That is the way that I understood his  
17 written statement when I first read it, is that  
18 these documents had somehow in one event been taken  
19 from the dumpster, had been taken from Mr. Vind's  
20 dumpster and sent to Methanex, and I had no  
21 indication that this was an ongoing investigation

1 and that there were actually 88 shipments of  
2 documents.

3           PRESIDENT VEEDER: It may have been  
4 inelegantly worded, but it's quite clear that his  
5 evidence is that there's more than one package,  
6 more than one box.

7           MS. MENAKER: Yes, yes, that is the case.

8           However, more importantly, in his  
9 statement, Mr. Puglisi said that all of the  
10 documents that were the subject of the United  
11 States's motion to exclude were taken from  
12 discarded documents--documents that were discarded  
13 behind Regent International's office, and he said  
14 that they were not illegally obtained.

15           Yesterday, when questioned about that  
16 statement that he made, he admitted that he did not  
17 look at each and every one of the documents to  
18 which his statement was supposed to refer to. He  
19 said, instead, that he relied on representations  
20 made by counsel that these were, in fact, the  
21 documents that he had in his possession.

1           As it turns out, however, we have now  
2   learned that Mr. Puglisi can't vouch for many of  
3   the documents as to which our motion is directed.  
4   Some of the documents he claims to have never seen  
5   before or has no recollection of having seen  
6   before, and they don't bear the markings that he  
7   indicated he places on documents that have been  
8   received. And, in fact, Ms. Morisset later  
9   testified that those documents were actually sent  
10   to her law firm and not to Mr. Puglisi.

11           Therefore, the statements that he made in  
12   his statement, not only are they hearsay statements  
13   not based on personal knowledge, but he did not  
14   even have the information that he needed to make  
15   those statements in good faith. He just said quite  
16   conclusively these documents weren't illegally  
17   obtained, they were found discarded, without any  
18   basis for making the statement with respect to many  
19   of these documents at issue.

20           Moreover, Mr. Puglisi's testimony also  
21   raises questions about the origins of many of the

1 documents. For example, in the draft itinerary  
2 that was--I'm going to get the citation for you.

3 PRESIDENT VEEDER: Tab 13 or Exhibit 151.

4 MS. MENAKER: Thank you very much.

5 First, we discovered that the original or  
6 the so-called original of that document does not  
7 match the document that Methanex had sought to  
8 place into evidence in this arbitration. The  
9 evidence that Methanex placed into--the document  
10 that Methanex placed into evidence contains a draft  
11 fax line at the bottom. The so-called original of  
12 this document does not contain that fax line.  
13 Therefore, we do not have the original of the  
14 document that Methanex has sought to place into  
15 evidence in this arbitration, and we have no  
16 testimony to corroborate from where that document  
17 came.

18 Second, the--Mr. Puglisi testified that he  
19 stamped the backs of the documents to indicate when  
20 we received certain documents, and if the document  
21 had more than one page, he just stamped the last

1 page. But as you can see from that exhibit, the  
2 second page, which contains handwritten notes on  
3 flight schedules, is stamped with a receipt date  
4 that predates the draft of the itinerary to which  
5 it was supposedly attached, further calling into  
6 question how, when, or if Mr. Puglisi ever received  
7 this document.

8           Now, as far as Ms. Morisset's testimony is  
9 concerned, the documents that she testified about  
10 are also suspect. As the Tribunal noted, the  
11 printout of Mr. Vind's Palm Pilot, the addresses,  
12 the address book found in his Palm Pilot was found  
13 to be in pristine condition. Ms. Morisset  
14 testified that the first page was slightly  
15 dog-eared, and she pointed to what was an  
16 imperceptible wrinkle, but that does not appear to  
17 be a document that was found in a dumpster  
18 containing an office building's trash, or at least  
19 there is no evidence to suggest that this document  
20 was there. There is no reason for us to believe  
21 that this document was there.



1           And finally, Ms. Morisset, of course, had  
2 no personal knowledge about how these documents  
3 were retrieved. She asks, instead, that we rely  
4 essentially on her word. She says that her law  
5 firm is adamant about respecting the law, and says  
6 that they would not hire anyone to do anything that  
7 was illegal. I would like to know and look into  
8 the reputation of her law firm so I could find and  
9 make a determination on my own whether I think her  
10 law firm has this stellar reputation, but we are  
11 denied that right because she won't reveal the  
12 identity of the law firm for which she worked.

13           Mr. Puglisi similarly won't reveal the law  
14 firm that hired him, so we're asked to take their  
15 word that this law firm is so upstanding that it  
16 would never engage in any of this activity, were it  
17 to be illegal, and yet they're unwilling to reveal  
18 to us the name of the law firm.

19           PRESIDENT VEEDER: Ms. Menaker, does the  
20 evidence show it's the same law firm, or is it two  
21 law firms?

1           MS. MENAKER: My understanding from the  
2 evidence is that it was the same law firm and that  
3 neither witness was willing to reveal the name of  
4 that law firm. That was my understanding from the  
5 testimony.

6           Now, these witnesses have been offered  
7 that don't have any personal knowledge. We believe  
8 there is strong evidence that what they've said or  
9 what they believe to be the case is not the case.  
10 The documents were not taken from a dumpster in a  
11 parking lot that was on public property behind  
12 Mr. Vind's office. There is no parking lot behind  
13 Mr. Vind's office that contains a dumpster, and I  
14 would like to show you some photographs--

15           MR. DUGAN: I'm going to object to this.  
16 There is no testimony in the record with respect to  
17 that. The photographs have not been authenticated.  
18 We don't know what they are. They stand alone.  
19 There's absolutely no testimony with respect to  
20 this. There is no evidence with respect to this.

21           PRESIDENT VEEDER: Ms. Menaker, how are

1 you going to deal with that objection?

2 MS. MENAKER: I would like to offer these  
3 photographs into evidence and refer to them. And  
4 as you know, Mr. Vind, the person who took these  
5 photographs and who can authenticate these  
6 photographs, is not only in Washington. He is  
7 here, he is going to be testifying later. We can  
8 call him to make himself available to the Tribunal  
9 sooner than that, if you would like him to testify  
10 to authenticate the documents.

11 PRESIDENT VEEDER: Are you saying that he  
12 would be in a position to authenticate the  
13 photographs?

14 MS. MENAKER: Yes.

15 PRESIDENT VEEDER: Today?

16 MS. MENAKER: Yes.

17 MR. DUGAN: If that's the case, we would  
18 like to have the chance to put in rebuttal  
19 testimony from the investigators themselves,  
20 videotape, video testimony.

21 PRESIDENT VEEDER: Well, let's--what we

1 would like to do is look at the photographs for  
2 information only at this stage. We are not  
3 receiving them into evidence, and we would like  
4 them to be proved, not only by Mr. Vind, but if  
5 photographs are to be relied on, we would like to  
6 know who took them and when they took them. So, we  
7 can have a look at them, subject to those  
8 restrictions.

9 MS. MENAKER: Okay. So, may I--would you  
10 like to see them now? May I refer to them?

11 PRESIDENT VEEDER: Yes. But please make  
12 sure Mr. Dugan has a set first.

13 MS. MENAKER: He does. These are the  
14 photographs I gave him copies of.

15 My assistant will be passing you out  
16 photocopies. These are--we received these  
17 photographs last night, so we only have one set of  
18 the original in color. These are black-and-white  
19 photos.

20 Would you like to see the colored ones?

21 PRESIDENT VEEDER: Will they go up on the

1 screen?

2 MS. MENAKER: They will go up on the  
3 screen, but I can bring them to you, if you would  
4 like to see them first.

5 (Pause.)

6 PRESIDENT VEEDER: For identification  
7 purposes only, not as exhibits, we've marked them  
8 X8, X9, and X10. X8 is the sheet with the tree in  
9 the middle of the top photograph. X9 is the sheet  
10 with the tree on the top left photograph, and X10  
11 has a Buddha-like figure in the bottom right of the  
12 photograph.

13 Ms. Menaker, we're looking at X8 up on the  
14 screen in color. Do you want to just talk us  
15 through what these photographs are? You say they  
16 were taken yesterday or received yesterday, taken  
17 earlier?

18 MS. MENAKER: No, I believe they were  
19 taken on Sunday, and that is the date at the  
20 bottom, bottom. It says 6/6/04. And Mr. Vind gave  
21 them to us last night when he arrived.

1           PRESIDENT VEEDER: Can you tell us who  
2 took the photographs.

3           MS. MENAKER: Mr. Vind.

4           PRESIDENT VEEDER: Can you talk us through  
5 the photographs, what you say they show.

6           MS. MENAKER: Yes. This is what I  
7 understand the photographs to show. The top  
8 picture on the right, X8, if you look at X8, the  
9 top picture, the building to the right is  
10 Mr. Vind's office building. His office was located  
11 on the second floor of that building. Across the  
12 street from that building is an Embassy Suites  
13 hotel, which is over there. That is, you know, in  
14 front of the lobby, like a carport that you drive  
15 through.

16           PRESIDENT VEEDER: You say "across the  
17 street." Is that a street?

18           MS. MENAKER: It's a passage. It has--the  
19 plant is in front of it. It's a passageway.

20           PRESIDENT VEEDER: We just want to get  
21 some rough idea what we are looking at,

1 Ms. Menaker. If you're taking it with Mr. Vind, we  
2 don't need to repeat the exercise twice. Just give  
3 us some idea of what we are looking at.

4 MS. MENAKER: Sure. You know, if it's  
5 okay with the Tribunal, Mr. Legum spent more time  
6 speaking with Mr. Vind about these photographs last  
7 night, so perhaps it would be better if he talked  
8 you through these.

9 PRESIDENT VEEDER: Okay.

10 MR. LEGUM: I will try to be brief.

11 So, on X8, the top photograph on the  
12 left-hand side, you can see that's a hotel, and  
13 that's the drive-through on the left-hand side for  
14 the hotel. The middle photograph shows where  
15 Mr. Vind's offices were located. The second floor  
16 of that building that's depicted there above the  
17 Salon sign is where his offices were located.

18 If you look below that on the right-hand  
19 side of the photograph, there is a set of doors  
20 which look vaguely pinkish in the original  
21 photograph. That is where the trash for this

1 building was stored.

2 And the bottom photograph in this series,  
3 of X8 that is, is a more detailed photograph of the  
4 doors where the trash was located.

5 X9 is essentially different perspectives  
6 on the same thing, so I will skip over that  
7 quickly.

8 And X10, again more photographs of pretty  
9 much the same thing from different vantage points.  
10 And I think it's probably best to--well, let's see,  
11 one final thing. On X10, the bottom photograph,  
12 you can see there's a building over there behind  
13 the building where Mr. Vind's offices was located.  
14 That is the Brea mall, and that in particular is a  
15 J.C. Penney's store.

16 PRESIDENT VEEDER: That is across the  
17 street, isn't it, the Brea mall?

18 MR. LEGUM: It is across a driveway, as I  
19 understand it. The street itself is on the other  
20 side of the building.

21 PRESIDENT VEEDER: It may be helpful, and



1 we put this out to both sides, if we just had a  
2 small map just to indicate the public street  
3 pattern around this building.

4 MR. LEGUM: I would suggest that when  
5 Mr. Vind appears we can have him draw a diagram.

6 ARBITRATOR REISMAN: May I refer you to  
7 X10, the top row of photos, right-hand side. Isn't  
8 that a parking lot behind the doors we know to be  
9 pink?

10 MR. LEGUM: No, my understanding is that  
11 is not a parking lot.

12 In front of the building, see let's if we  
13 can see this. And again, it's probably better for  
14 Mr. Vind to explain this than for me to do it, but  
15 on X10, if you look at the middle row of  
16 photographs, the right-hand side, you can see a set  
17 of stairs there. That is what you're seeing in the  
18 top photograph to the right. You can see the  
19 bannister for the stairs as it goes down.

20 There is in front of this building, as I  
21 understand it, a series of--

1           ARBITRATOR ROWLEY: Could you do that for  
2 me again because I missed it.

3           MR. LEGUM: X10--is that a close-up?  
4 X10--

5           MS. MENAKER: So, even if Methanex,  
6 Methanex's investigators retrieved these documents  
7 from the trash for the office building in  
8 Mr. Vind's prior premises, they would have had to  
9 have entered the building in order to access the  
10 dumpster or the trash, and that is illegal. I  
11 don't believe that even Methanex has contended that  
12 if the documents were obtained by entering the  
13 building, that that would be legal.

14           And in any event, obtaining these  
15 documents in such a manner is not legal under  
16 California law. Methanex provided a legal  
17 memorandum to support its proposition that it was  
18 legal to go through trash on public property in  
19 California, but the memo didn't cite any California  
20 law on this topic.

21           Now, what I have placed on the screen and

1 what is in your judge's folders is a city ordinance  
2 from the City of Brea, California, where Mr. Vind's  
3 property--Mr. Vind's office was located. This  
4 ordinance was passed in July of 1996, and I will  
5 quote, No person, other than the owner thereof, the  
6 owner's agents or employees, or an officer or  
7 employee of the City or a permittee's agents or  
8 employees authorized for such purposes, shall  
9 tamper or meddle with any solid waste, green waste,  
10 or recyclable material receptacle or the contents  
11 thereof, or remove the contents thereof, or remove  
12 any receptacle from the location where the same  
13 shall have been placed for collection.

14           And therefore, in the City of Brea,  
15 California, it is not legal to remove documents  
16 that have been placed in the trash without the  
17 owner's permission, unless you are a trash  
18 collector or otherwise authorized to do so by the  
19 owner or the City. And that is the case, even if  
20 the trash is located outside, even if it is in a  
21 dumpster that is located outside, whether it be in

1 a parking lot or at the curb.

2 Brea is not the only city in California to  
3 have such an ordinance. Many cities in California  
4 have similar ordinances.

5 And I have included in your judges' packet  
6 one case which is Schlesinger versus the Walt  
7 Disney Company.

8 PRESIDENT VEEDER: Just before you get to  
9 the case, you have given us a fuller text of the  
10 Brea City Code? In the event of a violation of  
11 this paragraph D, the ordinance, what is the  
12 penalty or consequence? Is that prescribed in the  
13 municipal code or elsewhere?

14 MS. MENAKER: I will take a look at that.  
15 I can discuss this case which interprets a similar  
16 code that the City of Burbank had.

17 In that case, the plaintiff had hired a  
18 private investigator to obtain corporate documents  
19 from Disney, and the plaintiff argued that it had  
20 instructed its investigator to only obtain Disney  
21 documents by lawful means. These documents were

1 taken out of an outside dumpster that was on  
2 private property, and that was deemed to be an  
3 illegal trespass under a Burbank, California,  
4 municipal code that's very similar to the Brea Code  
5 at issue in this case.

6           The Court rejected plaintiff's argument  
7 that it had instructed the investigator to only  
8 obtain the documents by legal means so it should be  
9 okay, and the Court stated, and I quote, The  
10 plaintiff claims that it instructed Sands to only  
11 obtain Disney documents by lawful means, but SSI,  
12 which is Schlesinger, full remains fully  
13 responsible for Sands's misconduct, even if his  
14 acts as SSI's agent were contrary to SSI's explicit  
15 instructions, end quote.

16           The Court excluded those documents from  
17 evidence and dismissed the case. The Court stated  
18 that based on this and other acts, that the  
19 plaintiff's behavior constituted, and I quote, a  
20 substantial threat to the integrity of the judicial  
21 process, end quote. That quote is at star two of

1 the opinion, the one that I just quoted, and the  
2 longer quote was star five.

3 And this case, as you can see, is from  
4 this year, from 2004, just a few months ago, the  
5 end of March of the California Supreme Court.

6 So, Mr. President, members of the  
7 Tribunal, we again ask that the Tribunal exclude  
8 from evidence all of the documents that were  
9 documents originating from Mr. Vind's files. Even  
10 if the documents were retrieved from a dumpster  
11 that was on public property, that would be illegal  
12 under California law. And as I indicated, there  
13 was no dumpster on Mr. Vind's property. The trash  
14 was actually kept inside the building, and if it  
15 was received--retrieved from that trash, it is  
16 clearly illegal.

17 So, for all these reasons and the others  
18 that we have outlined, we respectfully request that  
19 the Tribunal exclude these documents from evidence.

20 And I would just like to give the  
21 Court--excuse me, the Tribunal, the citation from

1 the Court. I began by citing Brennan's dissent in  
2 a U.S. Supreme Court case. That is California v.  
3 Greenwood at 486 U.S. 35. It was a 1988 case. The  
4 first quotation that I cited was at page 51, and  
5 the second citation was taken from page 45 of that  
6 opinion.

7 PRESIDENT VEEDER: Would you be able to  
8 supply with us a copy of that decision?

9 MS. MENAKER: Yes.

10 I believe it was in the materials that  
11 Methanex supplied us with, that it was one of the  
12 authorities on which they relied in there for their  
13 legal memorandum they submitted yesterday.

14 PRESIDENT VEEDER: I see, okay.

15 (Pause.)

16 PRESIDENT VEEDER: Thank you, Ms. Menaker.  
17 If you have come to the end of your submissions, we  
18 will turn the floor over to Mr. Dugan.

19 MR. DUGAN: Members of the Tribunal, this  
20 is a new argument that has been raised by the  
21 United States, in particular the legal argument

1 that this violated the city ordinance of Brea.  
2 This argument wasn't included in their reply to our  
3 opposition to their motion to exclude, and I would  
4 like the Tribunal's indulgence for a recess so we  
5 can go and look into this, please.

6 PRESIDENT VEEDER: Just before you go,  
7 Mr. Dugan, you want to recess to look into that,  
8 but in your interjection you indicated you might  
9 want to call further evidence.

10 MR. DUGAN: Correct, and we are trying to  
11 arrange for that, as well.

12 PRESIDENT VEEDER: Okay. So, how long  
13 would you like for us to break for at this stage?

14 MR. DUGAN: Could we break for 45 minutes?

15 PRESIDENT VEEDER: 45 minutes is a long  
16 time. We're certainly willing to give you every  
17 indulgence.

18 MR. DUGAN: A half hour?

19 PRESIDENT VEEDER: No, no, I'm just  
20 wondering whether we--is it something you need time  
21 for, or could we proceed with one of our witnesses?



1 It depends on if you're involved in the 45-minute  
2 activity or not.

3 MR. DUGAN: We could proceed with one of  
4 the witnesses, I believe.

5 PRESIDENT VEEDER: Let's break for 10  
6 minutes and then if you could just tell us  
7 informally whether you would be content for us to  
8 go forward with another witness.

9 MR. DUGAN: Okay.

10 PRESIDENT VEEDER: While others do the  
11 work that you could set in place.

12 MR. DUGAN: That's reasonable.

13 PRESIDENT VEEDER: So, let's break for 10  
14 minutes.

15 (Brief recess.)

16 PRESIDENT VEEDER: Let's resume.

17 Good morning, Mr. Listenberger.

18 THE WITNESS: Good morning.

19 ROGER LISTENBERGER, RESPONDENT/PARTY'S WITNESS,

20 CALLED

21 PRESIDENT VEEDER: You're going to be

1 examined and cross-examined as a witness in these  
2 proceeding, but before we proceed, I would invite  
3 to you make the declaration in the form of the text  
4 which is before you.

5 THE WITNESS: Shall I read it?

6 PRESIDENT VEEDER: Yes, please.

7 THE WITNESS: I solemnly declare upon my  
8 honor and conscience that I shall speak the truth,  
9 the whole truth, and nothing but the truth.

10 PRESIDENT VEEDER: Thank you,  
11 Mr. Listenberger.

12 Ms. Menaker.

13 DIRECT EXAMINATION

14 BY MS. MENAKER:

15 Q. Good morning, Mr. Listenberger. We've met  
16 before, but for the record I'm Andrea Menaker. I'm  
17 an attorney with the U.S. Department of State. I  
18 want to ask you a few brief questions on the  
19 statement that you provided in this arbitration.

20 Do you have a signed copy of that  
21 statement before you?

1       A.    Yes, I do.

2       Q.    And is that your statement?

3       A.    Yes, it is.

4       Q.    Can you take a moment to review that  
5 statement and just let me know when you've finished  
6 doing so, please.

7               (Witness reviews document.)

8       A.    All right.

9       Q.    You affirm that the statements were true.  
10 Are the statements in your statement correct, to  
11 the best of your knowledge as you sit here today?

12       A.    Yes, except for one portion in paragraph  
13 five, second page, the term "pharmaceutical  
14 business" is used, and the correct term should be  
15 "nutraceutical" business.

16               PRESIDENT VEEDER:  I'm sorry, could you  
17 just spell that out.

18               THE WITNESS:  I certainly hope I could do  
19 it, but it would be--it's nutraceutical.  It makes  
20 reference to vitamins or supplement type of  
21 products.

1 BY MS. MENAKER:

2 Q. Thank you.

3 In August of 1998, you were employed at  
4 ADM, were you not?

5 A. Yes.

6 Q. Are you still employed there?

7 A. No, I'm not.

8 Q. When did you cease being employed there?

9 A. At the end of 2003.

10 Q. And why did you leave ADM?

11 A. I took early retirement.

12 Q. In August 19--or how long had you worked  
13 for ADM before retiring?

14 A. Nearly 25 years.

15 Q. In August 1998, what was your position  
16 with ADM?

17 A. I was the Vice President of Marketing for  
18 Fuel Ethanol.

19 Q. And what were your job responsibilities in  
20 that position.

21 A. I headed up the sales, reviewed the

1 distribution, follow-up with all of our customers,  
2 customer satisfaction.

3 Q. In your statement, you testify about a  
4 dinner that you attended on August 4th, 1998.

5 Did you play any role in arranging that  
6 dinner?

7 A. No, I did not.

8 Q. When did you first learn that that dinner  
9 was going to take place?

10 A. I don't remember the exact date.

11 Q. Did you--do you recall whether or not you  
12 had a--I withdraw the question.

13 Do you have any--why were you asked to  
14 attend that dinner?

15 A. Martin Andreas, who at that time was our  
16 Vice President of Marketing for the corporation and  
17 Assistant to the Chief Executive Officer, a big  
18 part of his job was promoting ADM and their various  
19 products, and ethanol had a very high profile  
20 within ADM. A lot of people wanted to know about  
21 it. We frequently had guests come in to Decatur,

1 and he would ask myself or my boss to attend one of  
2 the meetings. And if there were questions that  
3 came up about ethanol, we could ask them--we could  
4 answer them and tell about what we were doing and  
5 what we expected to do in the future.

6 Q. Okay. What was your understanding as to  
7 the purpose of this dinner?

8 A. My understanding was that Mr. Davis was  
9 going to come into town and want to meet some  
10 people from ADM and promote his candidacy for  
11 becoming Governor of the State of California.

12 Q. Had you attended dinners or events like  
13 this previously?

14 A. Not with Mr. Davis, no.

15 Q. Had you attended dinners or events with  
16 other politicians or candidates previously?

17 A. Not really politicians. Mostly people who  
18 were interested in ADM's products, farm cooperative  
19 groups from around the country, people who are  
20 involved in agriculture.

21 Q. To the best of your recollection, at what

1 time did the dinner begin that evening?

2 A. Well, it was late and delayed by weather.

3 I don't know exactly what the time, beginning time

4 was, but it began about 8:00.

5 Q. And to the best of your recollection,

6 approximately how long did the dinner last?

7 A. One and a half to two hours.

8 Q. To the best of your recollection, who was

9 present at the dinner?

10 A. Alan Andreas, Martin Andreas, Gray Davis,

11 Richard Vind, and myself.

12 Q. And to the best of your recollection, what

13 was discussed at that dinner?

14 A. Well, Mr. Davis promoted Mr. Davis quite a

15 lot, talked about his upcoming candidacy and what

16 he had done as--in his political career in the

17 state of California, and Martin Andreas and Alan

18 Andreas promoted ADM very heavily, in talking about

19 a lot of the new products that we were in, that we

20 were involved in, particularly the new line of

21 nutraceuticals that we were involved in, and the

1 future of nutraceuticals.

2 Q. To the best of your recollection, was  
3 ethanol a topic of discussion at the dinner?

4 A. Not very much. It came up a few times.

5 Q. And what, to the best--to the best of your  
6 recollection, was MTBE discussed at the dinner?

7 A. Again, not very much. It came up a few  
8 times. One time in specific that I remember is as  
9 we were preparing to leave or walking out of the  
10 room, I asked Mr. Davis if he felt that in the  
11 upcoming election if MTBE would be an issue because  
12 it was getting a lot of press at that time as a  
13 serious groundwater contamination problem, and I  
14 asked him about that, and he said, no, he didn't  
15 think it would be an issue.

16 Q. To the best of your recollection, was  
17 methanol discussed at the dinner?

18 A. No, it was not.

19 Q. And to the best of your recollection, was  
20 Methanex Corporation discussed at the dinner?

21 A. No, they were not.



1 MS. MENAKER: That's all I have.

2 PRESIDENT VEEDER: Thank you, Ms. Menaker.

3 Ms. Callaway, we're now going to turn to  
4 the cross-examination of Mr. Listenberger, but one  
5 thing that crosses our mind, are you intending to  
6 refer during the cross-examination to any of the  
7 relevant Regent International documentation?

8 MS. CALLAWAY: Yes, I am.

9 PRESIDENT VEEDER: Please talk into the  
10 microphone, and do sit down.

11 MS. CALLAWAY: I'm sorry that I'm a novice  
12 here at the World Bank hearing room.

13 Yes, I am, and if it please the Tribunal,  
14 I would like to use the ELMO and sit near the ELMO  
15 because I have documents that I have prepared for  
16 everybody, adequate copies for the United States  
17 team, for the witness, and for the Tribunal, but I  
18 would like to show them on the projector, if I may,  
19 if it please the Tribunal, and if the United States  
20 does not object.

21 PRESIDENT VEEDER: Before we get to the

1 ELMO, how far into your cross-examination will you  
2 get before you refer to the first of the Regent  
3 International documents?

4 MS. CALLAWAY: Oh, I'm sorry, the Regent  
5 International documents. Oh, no, President Veeder,  
6 I won't be using any of the Regent International  
7 documents. I apologize for my misunderstanding. I  
8 was just doing housekeeping about wanting to use  
9 the fancy projector.

10 PRESIDENT VEEDER: Okay. Let's move to  
11 that.

12 Now, if you want to operate the ELMO, you  
13 will be a very long way from the witness in this  
14 room, as you appreciate.

15 MS. CALLAWAY: Yes, but if it does not  
16 bother anybody, including the witness, I would like  
17 to sit there.

18 PRESIDENT VEEDER: Why don't we break for  
19 two minutes while you re-establish yourself at the  
20 end of the table.

21 MS. CALLAWAY: Thank you very much.

1           PRESIDENT VEEDER: Make sure that it works  
2 in the way you want it to work.

3           MS. CALLAWAY: Thank you.

4           PRESIDENT VEEDER: Mr. Listenberger,  
5 forgive me, please wait there, and I will tell you  
6 now to save saying it later, once you start giving  
7 your evidence, we ask you don't discuss your  
8 testimony, save in the face of the Tribunal, so  
9 please don't discuss it with your colleagues or  
10 those beside or behind you. You can talk about the  
11 weather or anything else, but not about this case.

12           (Brief recess.)

13           PRESIDENT VEEDER: Let's proceed.

14           Ms. Callaway.

15                       CROSS-EXAMINATION

16           BY MS. CALLAWAY:

17       Q. Good morning, Mr. Listenberger, and thank  
18 you very much for being here.

19           You testified that you no longer work for  
20 Archer Daniels Midland; is that correct?

21       A. That's correct.

1 Q. And is it also correct that you worked  
2 there for approximately 25 years?

3 A. Yes.

4 Q. Now, Archer Daniels Midland is often  
5 referred to as ADM; is that correct?

6 A. Yes.

7 Q. And is it correct that ADM is comprised of  
8 four main divisions: Nutrition, animal nutrition,  
9 fuel and industrials, and food ingredients?

10 A. I think you'd get some argument on that.

11 Q. Well, tell me how, in your mind, there are  
12 divisions. I heard you used the term  
13 nutraceuticals "nutraceuticals." Is that a  
14 division?

15 A. No, it's commodities.

16 Q. Nutraceuticals are a commodity. Is lysine  
17 a nutraceutical?

18 A. I don't believe so.

19 Q. You worked in the fuel division at ADM; is  
20 that correct?

21 PRESIDENT VEEDER: One moment,

1 Ms. Callaway. Because the witness is turning  
2 towards you, unfortunately, the mike is not picking  
3 up. We are not important. The most important  
4 thing is the microphone, and the second most  
5 important person is our shorthand writer. Unless  
6 we get this down, it doesn't really count, so if  
7 you could just--I know it's crude, but if you look  
8 at the microphone when you answer rather than

9 Ms. Callaway.

10 BY MS. CALLAWAY:

11 Q. You worked in the fuel division; is that  
12 correct?

13 A. That's correct.

14 Q. And that was one of a few divisions at  
15 ADM; right?

16 A. Fuel ethanol is a part of the corn  
17 processing division. There is no real, true fuel  
18 division.

19 Q. For a number of years you were responsible  
20 for ADM's fuel ethanol sales in the western United  
21 States; is that correct?

1       A.    Western Marketing Manager was one of my  
2 titles, but my last title was Vice President of  
3 Marketing, and that was all over the United States.

4       Q.    So, for approximately 13 years, you were  
5 responsible for marketing of fuel ethanol  
6 throughout the United States?

7       A.    That's correct.

8       Q.    You would agree, wouldn't you, that in  
9 your capacity as being in charge of the sale of  
10 fuel ethanol you had an active interest in  
11 promoting its sale; is that correct?

12      A.    My job was to promote ethanol sales to all  
13 of our customers.

14      Q.    So, that was in your interest and ADM's  
15 interest to promote its sale?

16      A.    Well, it was in my interest if I was going  
17 to be employed, yes.

18      Q.    So, you would agree that it was in your  
19 interest; right? So, you would agree that it was  
20 in your interest; right?

21      A.    It was my interest to do a good job, yes.

1 Q. So, the answer is yes; right?

2 A. I guess so.

3 Q. And you would agree that by 1998, you had  
4 been at ADM for approximately 20 years?

5 A. Nineteen years.

6 Q. And within 19 years, you would agree that  
7 you were familiar with ADM's corporate culture;  
8 correct?

9 A. I was very familiar with my job in the  
10 corn processing division. I couldn't say that I  
11 was totally familiar with the entire corporate  
12 culture, no.

13 Q. As the person in charge of marketing fuel  
14 ethanol in the United States and as somebody who  
15 had been at Archer Daniels Midland for  
16 approximately 19 years, you were familiar with  
17 Dwayne Andreas's--its Middle East versus Middle  
18 West analogy regarding ethanol and methanol; is  
19 that correct?

20 A. No.

21 Q. You have seen before Mr. Andreas's

1 statements, such as this one that I have on the  
2 ELMO and that I have in front of you, where  
3 Mr. Andreas made clear--and this is in 1992--that  
4 methanol was a foreign product and ethanol was from  
5 the Middle West?

6 A. No, I'm not familiar with that.

7 Q. No pun intended, but this isn't completely  
8 foreign to you, is it?

9 A. A lot of our business associates in the  
10 corn processing side from the various corn and  
11 agricultural movements used this type of  
12 terminology.

13 Q. But Mr. Andreas wasn't just on the corn  
14 processing side; right?

15 A. That's correct. He was over the entire  
16 company.

17 Q. And as CEO, he was ultimately responsible  
18 for everything that came in and went out of ADM; is  
19 that correct?

20 A. Well, he oversaw it. There were people  
21 that did that.



1       Q.    But you will agree that as Archer Daniels  
2 Midland's CEO, when he spoke on CNN's Money Line on  
3 May 12th of 1992, he was speaking for the company;  
4 is that correct?

5       A.    Mr. Andreas always spoke for the company.

6       Q.    You've provided a sworn statement in this  
7 case; is that correct?

8       A.    Yes, I have.

9       Q.    And earlier with Ms. Menaker she mentioned  
10 that you had met her before; is that correct?

11      A.    Yes.

12      Q.    When was the first time that you met  
13 Andrea Menaker?

14      A.    I believe it was about two months ago.

15      Q.    Approximately how many times have you met  
16 with Ms. Menaker?

17      A.    Including today, three times.

18      Q.    How many other attorneys representing the  
19 United States in this case have you met with?

20      A.    One that I know of.

21      Q.    And who is that?

1       A.    Bart--I'm sorry--

2           MR. LEGUM:  Legum.

3           BY MS. CALLAWAY:

4       Q.    In addition to in-person meetings, have  
5 you had telephone conversations with Ms. Menaker?

6       A.    Yes, I have.

7       Q.    Did you have your attorney present during  
8 those conversations?

9       A.    At least one time, and then another time  
10 she called me and asked me a question at my desk.

11       Q.    And when you say, "at your desk," was that  
12 your desk at ADM or at the National Ethanol Vehicle  
13 Coalition?

14       A.    No, when I was at ADM.

15       Q.    And when you referred to your lawyer, do  
16 you mean an Archer Daniels Midland lawyer, or do  
17 you mean your personal counsel?

18       A.    I have no personal counsel.  It was an ADM  
19 attorney.

20       Q.    Do you recall who that ADM attorney was?

21       A.    David Smith.

1       Q.    I have provided a copy of this document in  
2   the packet that was submitted to you, and I want to  
3   be sure that I have the right document that is your  
4   sworn statement in this case.

5            If you could take a couple of moments to  
6   review it and let me know if you're familiar with  
7   it.

8       A.    The one in front of me or the one on the  
9   screen?

10      Q.    The one in front of you and the one on  
11   the--

12           MS. CALLAWAY:  I will represent to the  
13   Tribunal and to the United States and to you,  
14   Mr. Listenberger, that what I have provided to you  
15   is what I have put on the screen.

16           PRESIDENT VEEDER:  The witness is looking  
17   at the document that we've provided to him, which  
18   is his witness statement, and you can take it that  
19   he's only provided one witness statement, and what  
20   he's looking at is a witness statement to which he  
21   deposed in his direct examination.

1 MS. CALLAWAY: I will turn to the second  
2 page of this that is dated October 24th, 2003.

3 BY MS. CALLAWAY:

4 Q. Looking on the screen, is that your  
5 signature, Mr. Listenberger?

6 A. Yes, it is.

7 Q. And October 24th, 2003, that's the date  
8 that you made your sworn statement in this case; is  
9 that correct?

10 A. Evidently, yes.

11 Q. And with whom at the United States, or  
12 pardon me, let me rephrase that.

13 Did you communicate with one of the  
14 attorneys for the United States at the time that  
15 you prepared this statement?

16 A. Andrea Menaker, yes.

17 Q. And was that the first time that you spoke  
18 with Ms. Menaker?

19 A. No, I spoke to her prior to this.

20 Q. When did you first speak with Ms. Menaker?

21 A. I don't recall.

1 Q. You would agree that you spoke with  
2 Ms. Menaker on the phone a handful of times?

3 A. What is a handful? Just once or twice?

4 Q. Well, you spoke to her once around the  
5 time of preparing this affidavit; is that correct?

6 A. That's correct.

7 Q. Did you speak with her before then?

8 A. Yes, I believe I had a conversation with  
9 her.

10 Q. How many conversations?

11 A. I said, just a few times. I don't really  
12 recall how many.

13 Q. A few, maybe three, four?

14 A. Well, more like two or three possibly.

15 Q. And did you speak with her on the phone  
16 after making this sworn statement?

17 A. I don't believe so.

18 Q. But you first met with her in person two  
19 months ago; is that correct?

20 A. No, I first met with her in the ADM  
21 offices a few weeks ago.

1 Q. Oh, a few weeks ago. I'm sorry, I thought  
2 you said two months ago earlier.

3 So she visited the ADM offices; is that  
4 correct?

5 A. Yes, that could be a few months, to a few  
6 weeks. I'm not really sure of the time, of the  
7 date.

8 Q. So, your first meeting with her occurred  
9 at ADM's offices?

10 A. That's correct.

11 Q. Who else was present at that meeting?

12 A. David Smith and Bart, and again I'm sorry,  
13 I don't have the correct pronunciation of the last  
14 name.

15 Q. Mr. Legum?

16 A. Yes.

17 Q. What was discussed at that meeting?

18 A. My witness statement.

19 Q. And what did you discuss about your  
20 witness statement?

21 A. We went over what we had talked about, the

1 upcoming hearing that we are having today, how the  
2 procedure would take place, just that type of  
3 thing.

4 Q. So, it was you and Mr. Smith on behalf of  
5 ADM; right?

6 A. I don't know if he was really on behalf of  
7 ADM other than just being there. He was providing  
8 the office space and attended the meeting.

9 Q. So, he was there in his capacity as a  
10 lawyer; right?

11 A. Well, I'm not really sure what capacity he  
12 was there as. My meeting was with Andrea and Bart,  
13 and David attended the meeting.

14 Q. So, he was present for the entire meeting;  
15 correct?

16 A. Yes.

17 Q. He wasn't dressed like a Little League  
18 coach; right?

19 A. No.

20 Q. He was there in his offices at ADM; right?

21 A. That's correct.

1       Q.   In your witness statement, you testify  
2   about a secret meeting that took place at the  
3   Country Club of Decatur; is that correct?

4       A.   It was not a secret meeting.  It was very  
5   open.  It was a public place.

6       Q.   Was the meeting advertised?

7       A.   There wasn't a billboard out in front of  
8   the meeting place, but messages were--or  
9   itineraries were passed around to the company  
10   announcing that the meeting was going to be--the  
11   participants were invited to attend.

12      Q.   Did you review such an itinerary in  
13   preparing this statement?

14      A.   No.

15      Q.   Have you reviewed an itinerary regarding  
16   this meeting in preparation for your testimony  
17   today?

18      A.   No.  I saw one at the time, I suppose, but  
19   I don't remember seeing it since then.

20      Q.   Have you seen a list of attendees in  
21   preparation for your testimony today?



1       A.    No, I have not.

2       Q.    Now, the Decatur newspapers, both of the  
3   Decatur newspapers didn't cover this meeting, did  
4   they?

5       A.    No.

6       Q.    And the people who came from  
7   California--I'm sorry, let me rephrase that.

8            Let me ask you this:  Is it your testimony  
9   that ADM didn't hold secret meetings?

10      A.    What are you asking me?

11      Q.    I'm asking if it's your testimony that ADM  
12   didn't hold secret meetings.

13      A.    I didn't feel it was a secret meeting.

14      Q.    Is it your testimony that ADM didn't hold  
15   any secret meetings?

16      A.    I would have no knowledge of that.

17      Q.    You have no knowledge of any secret  
18   meetings?

19      A.    No.

20      Q.    I would like to show a videotape.

21            PRESIDENT VEEDER:  Ms. Callaway, just tell

1 us what this videotape is. Is this already in the  
2 record or is this something you're introducing as  
3 evidence, or what?

4 MS. CALLAWAY: I would like to--I will  
5 move later to submit it as evidence. This is a  
6 videotape from the United States Department of  
7 Justice depicting a secret meeting that was  
8 classified as a secret meeting by the United States  
9 Department of Justice.

10 MS. MENAKER: Excuse me, we object to this  
11 showing.

12 PRESIDENT VEEDER: Just for the moment  
13 hold up for the showing of the videotape while we  
14 sort this out.

15 Does this go to the witness's credibility  
16 or is it directed at a factual witness in the case?

17 MS. CALLAWAY: It goes to the witness's  
18 credibility.

19 PRESIDENT VEEDER: Ms. Menaker.

20 MS. MENAKER: Yes. We object to the  
21 showing. This is well beyond the scope of

1 Mr. Listenberger's statement. It has not been  
2 shown how this could possibly go to his  
3 credibility.

4 MS. CALLAWAY: I would--

5 PRESIDENT VEEDER: Just one moment.

6 Have you seen this video? Do you know  
7 what this video is about?

8 MS. MENAKER: We have not ever before seen  
9 this or heard about this video, so, no, I do not  
10 know what it's about, and we have not seen it.

11 PRESIDENT VEEDER: Ms. Callaway.

12 MS. CALLAWAY: Actually, President Veeder  
13 and members of the Tribunal, in one of the  
14 documents that I provided this morning that is from  
15 the joint submission with the caption of the  
16 informant, it's one page, 7 JS tab 171, March 10th,  
17 1994: Hawaii, all of the companies agree for the  
18 first time on how to split the market between them.  
19 Quick time movie, modem connection, high speed  
20 connection.

21 We put them on notice with the joint

1 submission that this would be evidence in this  
2 case.

3 MS. MENAKER: Excuse me, I would like to  
4 respond to that. When we have--

5 PRESIDENT VEEDER: We are lagging behind,  
6 I'm sorry. I just found the piece of paper, "The  
7 Informant," Article by Kurt Akbar. Which video are  
8 we looking at in the list of these videos?

9 MS. CALLAWAY: Actually, you know, it's  
10 March 10 of 1994 in Hawaii, and it's during an  
11 illegal meeting. A fake agenda for a bogus  
12 industry association is handed out. The executives  
13 discuss how this can be used as cover for their  
14 illicit activities.

15 PRESIDENT VEEDER: Thank you.

16 MS. CALLAWAY: And it's under the title  
17 "Video."

18 PRESIDENT VEEDER: How long is the video?

19 MS. CALLAWAY: I would say it's  
20 approximately 90 seconds.

21 PRESIDENT VEEDER: Thank you.

1           Ms. Menaker, you were going to say  
2 something?

3           MS. MENAKER: Yes, the document that was  
4 submitted into evidence is this document. No  
5 audiotape was submitted or videotape was submitted  
6 into evidence. There is no rule that we are put on  
7 notice that a videotape may be submitted into  
8 evidence because a piece of paper refers to an  
9 audio or a videotape.

10          And to the contrary, the United States has  
11 submitted audio materials into evidence. We have  
12 one of, I believe it was Pierre Choquette's annual  
13 teleconference, and when we wanted to submit that  
14 audiotape into evidence, we had a transcript, and  
15 we submitted the CD-ROM containing that audio into  
16 evidence. This is impermissible.

17          PRESIDENT VEEDER: Just wait one moment.

18          (Pause.)

19          PRESIDENT VEEDER: Ms. Callaway, we are  
20 going to let you run the video for the time being  
21 de bene esse. It won't stand as evidence. We

1 understand you are introducing it in order to  
2 attack this witness's credibility, but just to help  
3 us understand the 90 seconds better, is this  
4 witness one of the participants at this meeting?

5 MS. CALLAWAY: He is not a direct  
6 participant. However, this goes to his credibility  
7 in the sense that--

8 PRESIDENT VEEDER: You don't have to  
9 explain it. Just run the video, and let's will see  
10 where it goes.

11 MS. CALLAWAY: Thank you very much.

12 (Videotape shown.)

13 MS. CALLAWAY: I apologize. It must have  
14 been rewound. It was not our intention to show  
15 this--to show the entire meeting.

16 This is what we intended to show. Thank  
17 you.

18 (Videotape shown.)

19 MS. CALLAWAY: And this is where I would  
20 like to end. Thank you. Going back to--

21 PRESIDENT VEEDER: Just before you go,

1 Ms. Callaway, just for the transcript, since this  
2 won't be transcribed into the transcript, given the  
3 poor quality of the sound, what you showed was a  
4 video with subtitles of a meeting that apparently  
5 took place apparently on the 10th of March 1994 in  
6 Hawaii; is that correct?

7 MS. CALLAWAY: Yes. In a meeting that the  
8 United States Department of Justice has identified  
9 as being an illegal meeting, using a fake agenda  
10 for a bogus industry association.

11 I don't believe that meeting was  
12 advertised, either, President Veeder.

13 BY MS. CALLAWAY:

14 Q. Going back to your statement,  
15 Mr. Listenberger, of what I called the secret  
16 meeting on August 4th, but which you contend was  
17 not secret, you say that it wasn't advertised on a  
18 billboard; right?

19 A. That's correct.

20 Q. At the Country Club of Decatur, it wasn't  
21 listed on the meeting events that day, was it?

1       A.    Not that I'm aware of.

2       Q.    And Gray Davis was in attendance; right?

3       A.    Pardon me?

4       Q.    Gray Davis was in attendance; right?

5       A.    At the meeting?

6       Q.    Yes.

7       A.    Yes.

8       Q.    And at that time, he was a candidate for  
9 the Governor of California; is that correct?

10      A.    I don't know if he was really a candidate  
11 at that time or he was preparing to become a  
12 candidate.

13      Q.    This is a fancy time line that we had  
14 prepared that I've provided you a copy with.

15            Do you have any reason to doubt that on  
16 June 2nd, 1998, Mr. Davis received the Democratic  
17 nomination for Governor?

18      A.    I would have no idea.

19      Q.    But you do recall that it was August 4th  
20 of 1998 that you met Gray Davis at the Country Club  
21 of Decatur?



1       A.    Yes.

2       Q.    And you recall, don't you, that Mr. Davis  
3 arrived in Decatur via an ADM plane; is that  
4 correct?

5       A.    I don't know who provided the  
6 transportation.

7       Q.    Do you recall that Dick Vind was with  
8 Mr. Davis at that meeting?

9       A.    Yes, he was.

10      Q.    Do you recall that the Illinois State  
11 Police escorted Mr. Davis and Mr. Vind to the  
12 Country Club of Decatur?

13      A.    I don't--I don't recall that.

14      Q.    Not everybody who arrived at the Decatur  
15 airport to have dinner at the Country Club of  
16 Decatur got a police escort, did they?

17      A.    I don't know if they do or not, no.

18      Q.    Do you recall who else was in attendance  
19 at that meeting?

20      A.    Yes, Martin Andreas with ADM, Alan Andreas  
21 with ADM, Richard Vind, and Gray Davis, and myself.

1       Q.   Now, earlier you testified that you were  
2   the Vice President in charge of Marketing Ethanol;  
3   is that correct?

4       A.   Fuel ethanol.

5       Q.   Fuel ethanol, I apologize.

6               Now, if we were to do an organization  
7   chart, Martin Andreas would be above you in the  
8   organization chart; right?

9       A.   Yes, he would.

10      Q.   And Alan Andreas, he would be above you on  
11   the organization chart; right?

12      A.   Yes, he would.

13      Q.   Now, was Dwayne Andreas there?

14      A.   No, he was not.

15      Q.   In fact, he had gone home because  
16   Mr. Davis was so late; right?

17      A.   I don't know.

18      Q.   Do you recall waiting with him for  
19   Mr. Davis to arrive?

20      A.   With Dwayne Andreas?

21      Q.   Yes, sir.

1       A.    No.

2       Q.    Dwayne Andreas would definitely be above  
3 everybody else I've named from ADM on the  
4 organization chart; right?

5       A.    He was Chairman of the Board at that time.

6       Q.    Had he retired as CEO as of August 1998?

7       A.    Alan Andreas was Chief Executive Officer  
8 at that time.

9       Q.    And did Alan Andreas become CEO in 1998?

10      A.    I don't know when the appointment was  
11 made.

12      Q.    Do you recall Dwayne Andreas stepping down  
13 as the CEO?

14      A.    I don't know when the progression took  
15 place.

16      Q.    But you do recall that he was once CEO and  
17 then he wasn't CEO anymore; is that correct.

18            Was a gentleman named Mr. "Reiser" at the  
19 meeting?

20      A.    I don't recognize the name.

21      Q.    An attorney named Rick "Reiser"?

1       A.   Rick Reising?

2       Q.   Yes, I apologize.  Archer Daniels  
3 Midland's head lawyer, was he at the meeting?

4       A.   No, he was not.

5       Q.   If his name was on an agenda for the  
6 meeting, would that have been an error?

7       A.   No.  It was not unusual for the agendas to  
8 come out for meetings and have several people's  
9 names on them and then for one reason or another,  
10 someone couldn't make the meeting, or substitutions  
11 were made.

12      Q.   Earlier you testified that you were asked  
13 to attend to answer questions about ethanol; is  
14 that correct?

15      A.   Yes, I was.

16      Q.   And you also testified that you had not  
17 attended other meetings with politicians; is that  
18 correct?

19      A.   That's correct, as I mentioned before,  
20 Martin Andreas frequently would ask myself or my  
21 boss to come in and because he was promoting ADM

1 and ask us to be at the meeting. And if somebody  
2 had questions about fuel ethanol, we could answer  
3 the questions and talk about what was going on in  
4 the fuel ethanol business.

5 Q. In 1998, ethanol was regulated by the  
6 State of California; right?

7 A. What do you mean by "regulated"?

8 Q. Well, you were in charge of marketing for  
9 the fuel ethanol for ADM?

10 A. That's correct.

11 Q. And as somebody who was marketing that and  
12 in charge of marketing, you were aware of states  
13 where there were laws in place that regulated  
14 ethanol, ethanol content in gasoline; is that  
15 correct?

16 A. Well, the Federal EPA does that, and the  
17 states can have their own regulations, but it's  
18 generally set down by the Federal EPA.

19 Q. But in 1998 California had its own  
20 regulations, didn't it?

21 A. Yes, they did.

1       Q.   Now, going back to your statement and this  
2 meeting, California didn't regulate any of the  
3 nutraceuticals that you mentioned in 1998, did  
4 they?

5       A.   I would have no idea.

6       Q.   So, there was nobody at the August 4th,  
7 1998, meeting from the corn sweetener division;  
8 right?

9       A.   There was no one who headed up the corn  
10 processing division that was there, but Martin  
11 Andreas promoted the corn processing division, as  
12 he did all of the divisions.

13      Q.   In the same way that he promoted the  
14 ethanol division; right?

15      A.   Certainly.

16      Q.   In the same way that he promoted the  
17 animal nutrition products; right?

18      A.   Certainly.

19      Q.   In the same way that he promoted food  
20 ingredients; correct?

21      A.   Well, that's part of the corn processing

1 division.

2 Q. But unlike the fuel ethanol division,  
3 which had you representing it, there was nobody  
4 representing the food ingredient division  
5 individually; is that correct?

6 A. Well, I think Martin and Alan did a pretty  
7 good job, yes.

8 Q. But they weren't just there for the food  
9 ingredient division; is that correct?

10 A. No, they were promoting the company in  
11 general. That's their job.

12 Q. But you were just there promoting ethanol;  
13 right?

14 A. That's correct.

15 Q. So, you had you there, and you had Marty  
16 Andreas; correct?

17 A. That's correct.

18 Q. And Alan Andreas?

19 A. That's correct.

20 Q. Gray Davis?

21 A. Yes.

1 Q. Dick Vind?

2 A. Yes.

3 Q. Had you met Dick Vind prior to August 4th  
4 of 1998?

5 A. Yes.

6 Q. What was your understanding of what  
7 Mr. Vind did with ADM at that time?

8 A. Mr. Vind didn't do anything with ADM. He  
9 was an independent businessman.

10 Q. Was it just happenstance that he was at  
11 this dinner on August 4th of 1998, where you were  
12 there to talk about ethanol?

13 A. No, he was traveling with Mr. Davis and  
14 was his traveling partner to Decatur, Illinois.

15 Q. And Mr. Vind had been to Decatur,  
16 Illinois, before; is that correct?

17 A. Yes, he had.

18 Q. You met with him in Decatur, Illinois,  
19 before; is that correct?

20 A. I had seen him in Decatur, Illinois, yes.

21 Q. And Mr. Vind had done work on behalf of



1 various ethanol trade associations or trade  
2 associations that promoted the use of ethanol; is  
3 that correct?

4 A. Not various. He promoted fuel ethanol in  
5 the state of California.

6 Q. Did you work with Mr. Vind on projects  
7 involving fuel ethanol in the state of California?

8 A. No, I did not.

9 Q. Do you know who did at ADM?

10 A. Probably my boss at the time, Edward  
11 Harjehausen, H-A-R-J-E-H-A-U-S-E-N. Took me months  
12 to learn that.

13 Q. Well, I'll come back to Mr. Harjehausen  
14 later, but at this meeting, was there also a  
15 gentleman by the name of Dan Weinstein in  
16 attendance?

17 A. I don't recall.

18 Q. So, it was just the high-ranking ADM  
19 executives, you, Mr. Davis, and Mr. Vind; is that  
20 your recollection?

21 A. That's correct.

1 Q. Did Mr. Davis have any bodyguards there?

2 A. I don't recall.

3 Q. Well, this was an important meeting for

4 ADM, wasn't it?

5 A. Oh, I don't know if you would say that it

6 was important. Anybody that came to Decatur and

7 visited ADM is important, but I wouldn't classify

8 it as being a terribly important meeting.

9 Q. Well, if my son's class went and toured

10 ADM, they wouldn't get to go to dinner with Marty

11 Andreas and Alan Andreas at the Country Club of

12 Decatur; is that right?

13 A. No, you would be surprised. We frequently

14 put on large dinners for people at our large media

15 room in Decatur, Illinois, and serve them harvest

16 burgers and soy milk and take them out and show

17 them the fish, so, yes, they're very important.

18 Q. How frequently do you give political

19 visitors who is are campaigning for office \$100,000

20 within two weeks of meeting them at the Country

21 Club of Decatur?

1       A.    I would have no idea.

2       Q.    Getting back to your witness statement--

3           PRESIDENT VEEDER:  Just before you do  
4 that, remember that we have to break sharp at five  
5 to, so if you are coming to a natural break, I  
6 suggest you come to it before five to.

7           MS. CALLAWAY:  I'm happy to break right  
8 now, so it gives you three minutes to be prepared  
9 for--

10          PRESIDENT VEEDER:  I think we ought to  
11 make use of those three minutes.  Thank you,  
12 Ms. Callaway.  We'll break here.

13          MS. CALLAWAY:  Okay.  Thank you.

14          PRESIDENT VEEDER:  Mr. Listenberger, I  
15 hope you've been told, I have to interpose a  
16 witness in the middle of your evidence, so we would  
17 ask you to withdraw, but again, don't discuss your  
18 evidence until you come back before the Tribunal.  
19 We'll hear the other witness in the meantime.

20           (Brief recess.)

21       DANIEL WEINSTEIN, RESPONDENT/PARTY'S WITNESS,

1 CALLED

2 -- BY VIDEOLINK --

3 PRESIDENT VEEDER: My name is John Veeder,  
4 and I am Chairman of the Tribunal in these  
5 arbitration proceedings here, and I am sitting with  
6 my colleagues and the legal representatives of the  
7 parties. And I think we're seeing you,  
8 Mr. Weinstein; is that right?

9 THE WITNESS: That is correct.

10 PRESIDENT VEEDER: Now, can you see us?

11 THE WITNESS: I now can for the first  
12 time.

13 PRESIDENT VEEDER: Before we invite you to  
14 be a witness in these proceedings, we're going to  
15 ask you to make a declaration. I don't believe you  
16 have a copy of the text before you. I'm going to  
17 read out the declaration, and if you're willing to  
18 make the declaration, I will repeat the words,  
19 phrase by phrase. The declaration that we invite  
20 you to make is as follows: "I solemnly declare  
21 upon my honor and conscience that I shall speak the

1 truth, the whole truth, and nothing but the truth."  
2 Did you hear me read that?  
3 THE WITNESS: Yes, I did.  
4 PRESIDENT VEEDER: Are you willing to make  
5 that declaration?  
6 THE WITNESS: Yes. Do you want me to  
7 repeat it verbatim?  
8 PRESIDENT VEEDER: If you can remember it.  
9 Otherwise I will go through with it phrase by  
10 phrase. Let's do it slowly. I solemnly declare--  
11 THE WITNESS: I solemnly declare--  
12 PRESIDENT VEEDER: --upon my honor and  
13 conscience.  
14 THE WITNESS: Do you want me to raise my  
15 right hand?  
16 PRESIDENT VEEDER: No.  
17 THE WITNESS: --on my honor and  
18 conscience--  
19 PRESIDENT VEEDER: --that I shall speak  
20 the truth--  
21 THE WITNESS: --that I shall speak the

1 truth--

2 PRESIDENT VEEDER: --the whole truth--

3 THE WITNESS: --the whole truth--

4 PRESIDENT VEEDER: --and nothing but the  
5 truth.

6 THE WITNESS: --and nothing but the truth.

7

8 PRESIDENT VEEDER: Thank you very much.

9 Ms. Menaker.

10 DIRECT EXAMINATION

11 BY MS. MENAKER:

12 Q. Good morning, Mr. Weinstein.

13 A. Good morning.

14 Q. As you know, I'm Andrea Menaker. We've  
15 met before. I'm an attorney with the Department of  
16 State, and I want to just ask you a few brief  
17 questions based on the witness statement that you  
18 submitted in this arbitration. Do you have a copy  
19 of your signed witness statement with you?

20 A. I think in the rush to get here I may have  
21 left it in the car, believe it or not. Is that a

1 problem? I just realized that.

2 Q. I think it's okay to continue. That's  
3 okay.

4 A. I am sorry about that.

5 Q. That is quite all right. I mean, if you  
6 need it, we can have it faxed.

7 Do you recall--

8 A. I think I am fine.

9 Q. Do you recall having signed this witness  
10 statement?

11 A. Yes, I do.

12 Q. And you attested that the statements you  
13 made were truthful. Are the statements correct, to  
14 the best of your knowledge, as you sit here today?

15 A. Yes.

16 Q. What do you do for a living,  
17 Mr. Weinstein?

18 A. We have a small boutique investment  
19 banking firm in Los Angeles, financial services.

20 Q. And when did you first meet Governor  
21 Davis?

1       A.    I believe it was 1985, when he was an  
2 assemblyman, a state assemblyman.

3       Q.    Could you describe your relationship with  
4 Governor Davis.

5       A.    We developed a friendship when he was in  
6 his second term as an assembly member, and I went  
7 to work for him when he ran for statewide office  
8 for the first time in 19--at the end of '85, when  
9 he ran for State Controller.

10      Q.    And what was your role in Governor Davis's  
11 campaign for Governor back in 1998? Did you play a  
12 role in that campaign?

13      A.    I was a volunteer.

14      Q.    And as a volunteer, what did you do for  
15 him during the campaign?

16      A.    I was a friend of Gray's, as I said, for a  
17 number of years, and during that race in 1998, he  
18 was the underdog in the race. He was running  
19 against two very well funded opponents, so he  
20 really didn't have much money, so he called on a  
21 number of his friends to try to donate some time



1 and help him, and I was one of those friends.

2 Q. In your statement you say that you were in  
3 Chicago on August 4, 1998. Why were you in Chicago  
4 with Governor Davis?

5 A. At the time Gray was the Lieutenant  
6 Governor, and he was also, as you say, a candidate  
7 for Governor. One of the things that he had asked  
8 me to do was help him with groups outside of  
9 California, potential donors in New York and  
10 Chicago and Texas and in D.C. So, I helped him  
11 with his national fund-raising.

12 And I had also worked with some of the  
13 labor unions. I had worked for the AFL-CIO many  
14 years ago, and I had some relationships with the  
15 labor unions. So we went to a, I think it was, an  
16 Executive Committee meeting of the AFL-CIO in  
17 Chicago and that is why we were there.

18 Q. And I understand later that evening you  
19 attended a dinner in Decatur; is that correct?

20 A. Yes.

21 Q. Did you have any role in organizing this

1 dinner in Decatur, Illinois?

2 A. No. I didn't know about it until Gray  
3 invited me to join him.

4 Q. And when did he invite you to join him?

5 A. As we were leaving the hotel. I was going  
6 to--he invited me as we were leaving the hotel.

7 Q. Leaving the hotel--

8 A. It was not unusual--yes, I'm sorry, I  
9 think it was the Drake. I am not sure of the  
10 hotel, but it was in Chicago, and he just invited  
11 me along.

12 Q. Okay. And do you recall who was at the  
13 dinner?

14 A. Yes. It was myself and Gray and Dick  
15 Vind, who was based in California, and I knew Dick  
16 only in passing, a little bit, not very well, and  
17 his client was the one we were going to see. He  
18 was their representative in California.

19 Q. And do you recall who else in addition to  
20 you, Gray, and Mr. Vind were there?

21 A. I don't remember if Mrs. Davis joined us

1 or not. I thought she did, but I don't recall. I  
2 seem to recall that she did, but I don't remember  
3 exactly. We had some staff with us, California  
4 Highway Patrol, some support staff, but--and they  
5 went on the plane with us. They did not join us  
6 for the dinner. They did not sit in on the dinner.

7 Q. And what about the people in Decatur,  
8 Illinois, who you were going to visit? Who from  
9 Decatur was actually at the dinner, to the best of  
10 your recollection?

11 A. The two I remember were two of the  
12 Andreas--two people from the Andreas family. I  
13 remember one of them was Marty Andreas, I don't  
14 remember the other gentleman's name, and then there  
15 may have been one or two other executives from the  
16 company. But I don't recall all that well. I  
17 remember the two gentlemen.

18 Q. Okay. To the best of your recollection,  
19 what was the conversation at that dinner about?

20 A. Just to put it in perspective, we were  
21 somewhat reeling from the plane flight. It was a

1 very rough flight. We went through an electrical  
2 storm, so we were just happy to be on the ground.  
3 Once we got there, they took us on a little bit of  
4 a walking tour, and then we had dinner in a  
5 small--I remember it was a small room, so it was  
6 kind of an intimate dinner, it was around a small  
7 table, and they just talked about the company and  
8 what they did, some of their various products the  
9 countries they were in. Just kind of an overview,  
10 nothing really specific, but very general.

11 Q. And do you recall any specific topic of  
12 discussion?

13 A. The only--I do remember a couple of  
14 things. The one thing I remember in terms of  
15 products, they were talking about some soy  
16 products, some agricultural products that they were  
17 manufacturing, something with soy, and I ended up  
18 in a conversation with one of them about some tofu  
19 and sort of the advancements they were making in  
20 that area in terms of what it takes to buy--I think  
21 they were talking about some product, synthetic,

1 that was similar to ice cream. So, we were talking  
2 about desserts and things like that, I remember.

3 So, in terms of products, that is what I  
4 remember. And I also remember them saying that  
5 they thought that, you know, California was an  
6 important state, and they just talked about, you  
7 know, the--you know, just in very general about the  
8 company, and it was, again, very general in nature.

9 Q. And do you recall specifically any  
10 discussion of ethanol at the dinner?

11 A. No, I don't recall that at all.

12 Q. Do you recall there being any discussion  
13 of MTBE at the dinner?

14 A. No.

15 Q. Do you recall there being any discussion  
16 of methanol at the dinner?

17 A. No, none at all. Again, I think the one  
18 thing that I do recall was I think about tofu and  
19 food products and ag-related and things like that.

20 Q. Okay, just one final question. Do you  
21 recall there being any discussion of Methanex

1 Corporation at the dinner?

2 A. No.

3 Q. Okay. Well, thank you, and now someone  
4 else will be asking you some questions.

5 PRESIDENT VEEDER: Ms. Callaway.

6 CROSS-EXAMINATION

7 BY MS. CALLAWAY:

8 Q. Good morning. I'm Claudia Callaway. I am  
9 here on behalf of Methanex.

10 A. Good morning.

11 Q. I am sorry about the delay, and I will try  
12 to wait for the delay, the speed of sound.

13 You are a managing director of Weatherly  
14 Capital Group; is that correct?

15 A. Yes.

16 Q. And you just testified that Weatherly  
17 Capital Group is a small boutique investment  
18 banking firm; is that correct?

19 A. Yes.

20 Q. In 1998 you were also Managing Director at  
21 Weatherly Capital Group; right?

1       A.    Yes.

2       Q.    Just before I started asking questions,  
3 Attorney Andrea Menaker was asking you questions.  
4 Have you spoken with Ms. Menaker before today?

5       A.    Yes.

6       Q.    When was the first time you spoke with  
7 Ms. Menaker?

8       A.    I received a call from her for the very  
9 first time, could be--we could be going back about  
10 a year. I don't know exactly.

11      Q.    Have you ever met in person with  
12 Ms. Menaker?

13      A.    Yes.

14      Q.    How many times?

15      A.    One time.

16      Q.    And when was that?

17      A.    I think about a week ago. I think it was  
18 last week.

19      Q.    Did she visit you in Los Angeles?

20      A.    Yes.

21      Q.    Who else was present at that meeting?

- 1       A.    She came with Bart, her associate.
- 2       Q.    Was there anybody else present at the  
3 meeting?
- 4       A.    No.
- 5       Q.    Have you spoken with Gray Davis about this  
6 action?
- 7       A.    Never.
- 8       Q.    Have you spoken with anybody at Archer  
9 Daniels Midland Corporation about this action?
- 10      A.    No, I have not.
- 11      Q.    Did you review any documents during your  
12 meeting with Ms. Menaker and Mr. Legum?
- 13      A.    I think only my sworn statement, but no  
14 documents.
- 15      Q.    Have you ever seen an agenda concerning  
16 the dinner you attended in Decatur, Illinois?
- 17      A.    I don't think I have seen it.
- 18      Q.    Have you ever seen a list of attendees at  
19 that dinner?
- 20      A.    I was told about that.
- 21      Q.    You were told that there was a list?



1       A.    Yes.  I didn't see it, but I was told  
2   there was a list of attendees and that I was on  
3   that list.

4       Q.    Who told you about that list of attendees?

5       A.    I think it may have been Andrea and Bart.  
6   I did not know about it before then.

7       Q.    What did Ms. Menaker and/or Mr. Legum tell  
8   you about the case of the claimant, Methanex, in  
9   this case?

10           MS. MENAKER:  Excuse me.  This is beyond  
11   the scope of his statement.

12           PRESIDENT VEEDER:  Just one moment,  
13   Mr. Weinstein.  There is an objection to that  
14   question, Ms. Callaway.  Did you hear the  
15   objection?

16           MS. CALLAWAY:  Yes, I did.  And it's  
17   not--the scope objection does not qualify here.  
18   Ms. Menaker and Mr. Legum traveled to Los Angeles  
19   to prepare this witness for his testimony today.  
20   Because he is not their client, we are entitled to  
21   know everything that was discussed in that meeting.

1           PRESIDENT VEEDER: But you have put the  
2 question on a very broad basis. You might want to  
3 narrow it down to make it a bit more easily  
4 understood by the witness.

5           MS. CALLAWAY: Thank you very much.

6           BY MS. CALLAWAY:

7       Q. How long did you meet with Ms. Menaker and  
8 Mr. Legum last week?

9       A. Less than an hour. Not very long.

10      Q. During that meeting, did Mr. Legum or  
11 Ms. Menaker mention anything about the case that  
12 Methanex, the claimant in this case, is presenting?

13      A. Yes.

14      Q. And what did they tell you?

15      A. They just explained that Methanex was, I  
16 think, filing a claim under NAFTA and then just  
17 explained it to me generally.

18      Q. Did they tell you what was being alleged  
19 by Methanex?

20      A. Yes.

21      Q. What did they tell you was being alleged

1 by Methanex?

2 A. I don't know the technicalities, but  
3 essentially, I think Methanex was alleging that ADM  
4 was given preferential treatment and, thus,  
5 Methanex was penalized because ADM was supporting  
6 Gray when he ran for Governor.

7 Q. Did Ms. Menaker or Mr. Legum ever tell  
8 you, either in person or by telephone or by letter,  
9 why you were chosen by the United States as a  
10 witness in this case?

11 A. Yes, I think, because I was present at  
12 that dinner. I think they said that I would  
13 probably be called to testify.

14 Q. Gray Davis was present at that dinner as  
15 well; is that correct?

16 A. Yes.

17 Q. Did Ms. Menaker or Mr. Legum ever tell you  
18 why Gray Davis is not a witness in this case?

19 A. No.

20 Q. Going back to your witness statement and  
21 to your testimony today, you've testified that

1 you've been at Weatherly Capital Group for a number  
2 of years; correct?

3 A. Correct.

4 Q. Prior to that, you held different  
5 positions; is that correct?

6 A. Yes.

7 Q. One of those positions was in the  
8 government with Kathleen Brown as the State  
9 Treasurer, when she was State Treasurer; is that  
10 correct?

11 A. On her political side.

12 Q. And when you say, "political side," what  
13 did your job entail?

14 A. I was working for her when she was  
15 contemplating and then eventually running for  
16 Governor--first contemplating a run, forming a  
17 committee, and then ultimately running for  
18 Governor.

19 Q. And one of your positions was on the  
20 political side for Gray Davis's first statewide  
21 election, you said?

1       A.    Yes.

2       Q.    And when you say it was on the political  
3 side, did you have a paid political position?

4       A.    Yes.

5       Q.    So, that wasn't on a volunteer basis?

6       A.    No.

7       Q.    Prior to your time working for Ms. Brown  
8 or Mr. Davis, one of the positions you held was as  
9 Political Director for the United Food and  
10 Commercial Workers Group; is that correct?

11      A.    Yes.

12      Q.    And as the union's Political Director, you  
13 met with a number of candidates and elected  
14 officials; is that correct?

15      A.    Yes.

16      Q.    So, it has been 20 years, give or take,  
17 that you have been working with politicians on  
18 fund-raising; is that correct?

19      A.    Yes, more or less.

20      Q.    When you worked at the Food Workers Union,  
21 you assisted the Union in deciding which candidates

1 and which elected officials would receive the  
2 union's political contributions; correct?

3 A. I would be a part of that process.

4 Q. Right. And that was one of your jobs at  
5 the union; right?

6 A. Yes.

7 Q. So, you understood what goes on when a  
8 union is determining whether to make an  
9 investment--I am sorry, I was thinking of your  
10 investment banking--make a contribution to a  
11 candidate; is that correct?

12 A. I think--yes. They weighed several  
13 factors in determining who to support.

14 Q. One of the factors that a group weighs is  
15 the--let me rephrase that. I apologize. When a  
16 group is determining whether to contribute money to  
17 a political candidate, they want to know the  
18 candidate's views on issues important to that  
19 group; isn't that correct?

20 A. I'm sorry, can you repeat that? I didn't  
21 hear you that well.

1       Q.   That's okay.  It wouldn't be the first  
2 time someone couldn't hear me.

3               When a group is determining whether to  
4 give money to a political candidate or an elected  
5 official, one of the things that they look at is  
6 that candidate's or that elected official's  
7 position on issues that are important to that  
8 group; is that correct?

9       A.   I think that's taken into consideration.  
10 That's a part of it.

11       Q.   You have never been with a group  
12 contemplating a political contribution that would  
13 give money to a candidate whose views were directly  
14 opposed to the most important issues for that  
15 group, have you?

16       A.   Offhand, I can't think of any, any  
17 example, but I think that is unlikely.

18       Q.   Now, in your sworn statement you admit to  
19 being a close friend of Gray Davis, don't you?

20       A.   Friends.  We have known each other for a  
21 long time.

1       Q.   Well, you are in fact so close to Gray  
2   Davis that he appointed you as an alternate to the  
3   California Coastal Commission; is that correct?

4       A.   No.  He appointed me to a different  
5   position.  I was appointed to the Coastal  
6   Commission by the Speaker of the Assembly.

7       Q.   Are you close friends with the Speaker of  
8   the Assembly as well?

9       A.   Yes.

10      Q.   Now, earlier you mentioned that you were  
11   asked specifically by Mr. Davis to assist him in  
12   raising funds in New York?

13      A.   In a number of places, but in New York as  
14   well.

15      Q.   Chicago?

16      A.   Yes.

17      Q.   Texas?

18      A.   Yes.  My family is from Houston, so I had  
19   some relationships there and some people I was able  
20   to introduce him to.

21      Q.   You mentioned that he was an underdog



1 running against well funded opponents; is that  
2 correct?

3 A. Yes.

4 Q. Now, you recall that Mr. Davis received  
5 the Democratic nomination for Governor in June of  
6 1998; is that correct?

7 A. Yes.

8 Q. And you will recall that your sworn  
9 statement talks about a meeting on August 4 of  
10 1998; is that correct?

11 A. I think that is correct.

12 Q. So, in August of 1998, when you went to  
13 Decatur, Illinois, Mr. Davis already had the  
14 Democratic nomination wrapped up; right?

15 A. Yes.

16 Q. He was only raising money going forward  
17 for his campaign against the Republican candidate;  
18 correct?

19 A. Yes.

20 Q. Now, since 1986, when you were working as  
21 the Political Director for the Union, you have been

1 helping Gray Davis raise capital; is that correct?

2 A. On and off, at certain times.

3 Q. And in the summer of--

4 A. Not continuously.

5 Q. Okay. But going to your sworn statement  
6 in the summer of 1998, you accompanied Gray Davis  
7 to Chicago to introduce him to some members of the  
8 AFL-CIO Executive Council; is that correct?

9 A. Well, he knew a number of them, but I was  
10 making some additional introductions and just  
11 accompanying him on the trip.

12 Q. Just to recap, and I'm sorry that you  
13 don't have a copy in front of you, but in reading  
14 paragraph three of your sworn statement, you state,  
15 quote, In the summer of 1998, Gray Davis asked me  
16 to join him on a trip to Chicago to introduce him  
17 to some representatives at the AFL-CIO Executive  
18 Council meeting, which was being held at the Drake  
19 Hotel.

20 So you did introduce him to some of the  
21 representatives; is that correct?

1       A.    Yes.

2       Q.    And this is one of the Chicago groups that  
3 he specifically asked you to assist him with for  
4 fund-raising; right?

5       A.    Yes.

6       Q.    And that introduction was ultimately  
7 successful because the AFL-CIO Executive Council  
8 decided to provide some monetary support for  
9 Mr. Davis, didn't they?

10      A.    Yes, they did.

11      Q.    And after that meeting, in which you  
12 introduced Gray Davis to the AFL-CIO Executive  
13 Council, Mr. Davis told you he was going to fly to  
14 Decatur, Illinois, to meet with executives of  
15 Archer Daniels Midland; is that correct?

16      A.    Yes.

17      Q.    And he invited you to join him, didn't he?

18      A.    Yes.

19      Q.    Now, you had flown to Chicago on a  
20 commercial airliner, United Airlines; is that  
21 correct?

1       A.    I flew commercial.  I don't recall the  
2 flight, but I flew commercial.

3       Q.    And you were prepared to either stay in  
4 Chicago or go home that evening; correct?

5       A.    I think it was I was scheduled out the  
6 next day.  I don't remember, but I wasn't planning  
7 to leave that evening.

8       Q.    But as a volunteer fund-raiser to Gray  
9 Davis's campaign, you agreed to accompany him on  
10 the flight to Decatur; is that right?

11      A.    Yes.

12      Q.    But when you got to the airport in Chicago  
13 for that flight to Decatur, the weather had turned  
14 very stormy, hadn't it?

15      A.    Yes, it did.

16      Q.    In fact, it was so stormy that you  
17 considered canceling the trip to meet the Archer  
18 Daniels Midland officials, didn't you?

19      A.    Well, I don't know about--no.  We--we  
20 were--I think collectively, the group, we were, you  
21 know, debating whether to fly or not.

1       Q.    Again, going back to your sworn statement,  
2   and, again, I apologize that you don't have a copy  
3   in front of you, in paragraph four, you testify,  
4   quote, We considered canceling the trip, but  
5   eventually went ahead with the flight, unquote.

6   Is that accurate testimony?

7       A.    Yes.

8       Q.    But you didn't cancel the trip, did you?

9       A.    No.  We went forward.

10      Q.    And a private plane picked you up,  
11   didn't it?

12      A.    Yes.

13      Q.    And Dick Vind was on that plane, wasn't  
14   he?

15      A.    Yes, he was.

16      Q.    So, you and Dick Vind and Gray Davis took  
17   the flight to Decatur; is that correct?

18      A.    Yes.

19      Q.    Mr. Vind had already met that day with  
20   some folks from Archer Daniels Midland on behalf of  
21   Mr. Burton; is that correct?

1       A.    That, I wasn't aware of.

2       Q.    Do you recall the details of the  
3 conversation on your plane ride from Chicago to  
4 Decatur with Mr. Vind?

5       A.    No, because I wasn't sitting with Dick and  
6 with Gray. I was--they were sitting together, and  
7 I was sitting across.

8       Q.    Was it a small plane?

9       A.    It was pretty small plane. It was  
10 private.

11      Q.    Private plane, about six people, eight  
12 people?

13      A.    I think it was about eight passengers. I  
14 think it was about an eight-seater. I don't know.  
15 I think that is what it was.

16      Q.    But you couldn't hear every conversation  
17 on the plane; right?

18      A.    I couldn't hear, and to tell you the  
19 truth, I wasn't paying much attention because I was  
20 watching the weather outside.

21      Q.    The weather was so bad that the flight was

1   frightening to you, wasn't it?

2       A.    It was bad.

3       Q.    In your sworn statement you state that,  
4   quote, I don't recall much about the trip other  
5   than the fact that the flight was frightening  
6   because of the bad weather, unquote.  Is that  
7   accurate?

8       A.    Yes.

9       Q.    I would like to ask you about the secret  
10   meeting in Decatur with Gray Davis.  You weren't  
11   told about the meeting until your AFL-CIO meeting  
12   was finished?

13           MS. MENAKER:  Excuse me, I would like to  
14   object to the phrasing of that question.

15           PRESIDENT VEEDER:  Well, I think we are  
16   used to the phrase.  Let it be.

17           MS. MENAKER:  Yes, we may be, but I don't  
18   know if the witness is.

19           PRESIDENT VEEDER:  Well, it wasn't the  
20   witness's phrase.

21           BY MS. CALLAWAY:

1       Q.    You weren't advised of the meeting with  
2   the Archer Daniels Midland executives until hours  
3   before the meeting was to occur, were you?

4       A.    Literally right before we were leaving,  
5   that is when I first became aware of it.

6       Q.    Now, you earlier testified that you  
7   recalled that two of the Andreas family members  
8   were present; is that correct?

9       A.    Yes.

10      Q.    Do you recall that a lawyer for Archer  
11   Daniels Midland named Rick Reising was there?

12      A.    No, I don't remember him.

13      Q.    Do you recall that Roger Listenberger, who  
14   was ADM's ethanol marketing executive--do you  
15   recall him being there?

16      A.    No, I don't.

17      Q.    Well, just like you couldn't hear every  
18   conversation in the eight-seat airplane, which was  
19   an intimate setting, you couldn't hear every  
20   conversation at the table that night, could you?

21      A.    I certainly don't remember every



1 conversation.

2 Q. You can't remember everything that was  
3 discussed, can you?

4 A. I remember very little about what was  
5 discussed. I just remember generally from six  
6 years ago a little bit about the company.

7 Q. But earlier today you testified that you  
8 recall that ADM said that California was an  
9 important state; is that correct?

10 A. I think they were talking about it being  
11 the biggest state. We talked about it being--I  
12 remember Gray was talking about it being the fifth  
13 or sixth largest economy, and, you know, he was  
14 excited about the challenges. It was kind of sort  
15 of rhetorically the stuff that he talked about with  
16 people when he would talk about the campaign and  
17 sort of outlining his goals and objectives and his  
18 vision for California.

19 Q. Just to repeat your earlier testimony, and  
20 if you would like, I can go to the exact quote, but  
21 earlier when you were being questioned by

1 Ms. Menaker, you stated that you recall ADM saying  
2 that California was an important state. Do you  
3 recall using that word this morning?

4 A. Yes, I do.

5 Q. At the time of the secret dinner, you  
6 didn't know what MTBE was, did you?

7 A. Well, I didn't know it was a secret  
8 dinner, but--and I did not know--I never heard of  
9 MTBE until probably a couple of years later, after  
10 Gray became Governor and that became an issue in  
11 California.

12 MS. CALLAWAY: The Tribunal's indulgence  
13 for a moment?

14 (Pause.)

15 BY MS. CALLAWAY:

16 Q. When were you appointed to the Coastal  
17 Commission?

18 A. Let me think back. I think it was--I  
19 think it was in 2000.

20 Q. And that's a commission that monitors  
21 environmental issues?

1       A.    It does.  It's basically preservation of  
2 the coastal line, coastal protection.

3       Q.    Protecting the coastline and the water  
4 that forms the coast; is that correct?

5       A.    Yes.  It really has to do with development  
6 on the coast and public access and issues like  
7 that.

8       Q.    And as a resident of California, had you  
9 followed those issues for some time?

10      A.    I had followed it, but not--I had not paid  
11 particular close attention to it.  The Speaker  
12 asked me to serve, and I accepted.

13      Q.    But you were a close friend of Gray Davis  
14 when he was elected; right?

15      A.    Yes, I think so.

16      Q.    And as a close friend of his, and somebody  
17 who helped him raise funds across the country, you  
18 were certainly aware of what some of his first acts  
19 in office were, first official acts; is that  
20 correct?

21      A.    Well, to tell you the truth, I can't

1 remember his first official act. Now we are going  
2 back to January 1999. It is hard to remember what  
3 he did in those first 100 days. I remember his  
4 focus was on education. That is what he got  
5 elected on, and that was his primary focus at the  
6 outset.

7 Q. Well, then, does it surprise you that if he  
8 was elected on education, one of his first  
9 Executive Orders in March of 1999, within his first  
10 100 days, was to ban MTBE in the state of  
11 California?

12 A. I didn't know what MTBE was.

13 MS. CALLAWAY: Thank you very much for  
14 coming to testify this morning. I appreciate it.  
15 And I have no further questions.

16 THE WITNESS: Thank you.

17 PRESIDENT VEEDER: If you wouldn't mind  
18 waiting for a moment, we have some more questions  
19 from Ms. Menaker.

20 MS. MENAKER: Actually, we have no  
21 redirect.

1           PRESIDENT VEEDER: Mr. Weinstein, we have  
2 come to the end of your questions because there are  
3 no more questions from the parties or the Tribunal.  
4 Again, from the Tribunal's perspective, we thank  
5 you for the trouble you have taken to come to be a  
6 live witness, and we now come to the end of this  
7 session. Thank you very much indeed.

8           THE WITNESS: Okay. Thank you.

9           (Witness steps down.)

10          PRESIDENT VEEDER: Shall we resume with  
11 Mr. Listenberger's cross-examination? While he is  
12 being brought, can we just invite Mr. Dugan to  
13 indicate what progress has been made in regard to  
14 the response to the U.S.A.'s motion?

15          MR. DUGAN: We are making progress, but we  
16 would like some more time, and I think the way that  
17 the schedule will play out today, it looks like  
18 Mr. Listenberger will conclude before lunch, and  
19 then we could perhaps have a lunch break and then  
20 revisit it before Mr. Vind comes on.

21          PRESIDENT VEEDER: If U.S.A. is content to

1 proceed on that basis, we will continue with  
2 Mr. Listenberger to the end and review the  
3 situation then.

4 MS. MENAKER: That is fine with us.

5 PRESIDENT VEEDER: Ms. Callaway, it's over  
6 to you again. Are you going to sit at the end of  
7 the table?

8 MS. CALLAWAY: Yes. It is the only time I  
9 get to sit at the head of a long table.

10 PRESIDENT VEEDER: We will resume  
11 cross-examination by Ms. Callaway.

12 Just one moment.

13 (Pause.)

14 PRESIDENT VEEDER: Thank you very much for  
15 returning, Mr. Listenberger. We're now going to  
16 resume your cross-examination by Ms. Callaway.

17 Ms. Callaway?

18 Just one moment.

19 (Pause.)

20 CONTINUED CROSS-EXAMINATION

21 BY MS. CALLAWAY:

1       Q.   Mr. Listenberger, before the break, you  
2 testified for, give or take, 40 minutes; correct?

3       A.   I believe so.

4       Q.   And in response to a number of my  
5 questions, you responded by saying, I don't recall  
6 certain details; is that correct?

7       A.   Some of them, yes.

8       Q.   For example, you couldn't recall if ADM's  
9 head lawyer was at the meeting, the secret meeting  
10 August 4th of 1998?

11      A.   I don't believe Mr. Reising was at that  
12 meeting, no.

13      Q.   And you cannot recall if a gentleman named  
14 Dan Weinstein was there; is that correct?

15      A.   No, I can't.

16      Q.   If you can't recall these things--you must  
17 have prepared for your testimony with the lawyers  
18 for the United States; is that correct?

19      A.   I talked to Andrea. She explained how the  
20 meeting would run. I can only recall what I  
21 recall.

1       Q.   Exactly.  I am sure that the United States  
2 told you not to guess; right?

3       A.   They told me to be as accurate as I could  
4 and honest.

5       Q.   Well, do you honestly know why you are the  
6 witness for the United States rather than Alan  
7 Andreas?

8       A.   I have no idea.

9       Q.   Do you know honestly why you are the  
10 witness for the United States rather than Marty  
11 Andreas?

12      A.   I have no idea, again.

13      Q.   Going back to your sworn statement in this  
14 action, in your statement you estimated that dinner  
15 lasted somewhere between two and two-and-a-half  
16 hours; is that correct?

17      A.   One-and-a-half to two hours.

18      Q.   I would just like to direct you to  
19 paragraph four of your statement.  In the second  
20 sentence, "I would estimate that the dinner lasted  
21 somewhere between two and two-and-a-half hours."



1       A.    Yes, but I believe I answered that  
2 previously, when you asked me, about one-and-a-half  
3 to two hours.

4       Q.    So, is your testimony changing today?

5       A.    I just didn't pay attention to that this  
6 morning when I read through it.

7       Q.    You would agree, wouldn't you, that your  
8 recollection of events would be fresher October 24  
9 than it would be today, eight months later; is that  
10 correct?

11      A.    I feel very comfortable with the comments  
12 that I have on here today and as I did then.

13      Q.    You don't feel as comfortable with them  
14 today?

15      A.    No, I said I feel comfortable with the  
16 same comments today as I did then.

17      Q.    So, your testimony is not changing today?

18      A.    No.

19      Q.    Well, going to the second page of your  
20 sworn statement--

21      A.    Yes.

1       Q.   --and going back to 1998 and to the dinner  
2 at the Country Club of Decatur, were you a member  
3 of the Country Club of Decatur, Mr. Listenberger?

4       A.   No, I am not.

5       Q.   Was Mr.--were either of the  
6 Messrs. Andreas members of the Country Club of  
7 Decatur?

8       A.   I don't really know if they are or not.

9       Q.   Is this a country club that needs to  
10 invite you to become a member before you join?

11      A.   I don't know what the procedure is.  
12 Normally you would submit an application and then  
13 it would be reviewed.

14      Q.   In your sworn statement, you testified  
15 that Mr. Davis was late for his dinner that night;  
16 is that correct?

17      A.   Yes, I did.

18      Q.   And you testified that that is because the  
19 weather was bad that night; is that correct?

20      A.   That is correct.

21      Q.   Do you recall if it was an electrical

1 storm that evening?

2 A. Yeah, it was just very bad weather and--I  
3 don't remember exactly what it was, but it was very  
4 bad, rainy, inclement weather.

5 Q. Late summer storm--or midsummer--August  
6 storm?

7 A. I suppose.

8 Q. You testified that during the two to  
9 two-and-a-half hours, you and your colleagues  
10 discussed ADM's business with Gray Davis; correct?

11 A. Both Mr. Marty Andreas and Alan Andreas  
12 promoted ADM during that meeting, I would say. I  
13 said very little.

14 Q. Going to paragraph five, the first  
15 sentence, "Over the course of the dinner, I, along  
16 with some of my colleagues, discussed ADM's  
17 business."

18 Is that correct?

19 A. Yes. I am being rather generous about  
20 myself. I said very little.

21 Q. You would admit that you couldn't hear all

1 of the conversations at the table; right?

2 A. I could hear quite well. It was a small  
3 room.

4 Q. Is it your testimony that you heard every  
5 conversation at the table?

6 A. Probably not, no.

7 Q. And it is your testimony that the  
8 discussions focused primarily on ADM's presence in  
9 California; isn't that correct?

10 A. No. The conversation by or the  
11 conversation initiated by Martin Andreas and Alan  
12 Andreas was about ADM in general.

13 Q. Going back to paragraph five, the second  
14 sentence, quote, In doing so, we primarily focused  
15 on ADM's presence in California and ADM's sweetener  
16 and pharmaceutical businesses, with only brief  
17 discussion of ADM's ethanol business.

18 Is that accurate?

19 A. Yes. There was a lot of business of ADM's  
20 business in general in sweeteners and in the  
21 nutraceutical side. The comments about ADM

1 participating in California were brought up, yes.

2 Q. In fact, eight months ago you said that  
3 was the primary focus of your conversations that  
4 evening; is that correct?

5 A. I said it was focused on ADM's presence in  
6 California and ADM's sweetener and nutraceutical  
7 businesses, which were very broad businesses all  
8 over the country, and the world, for that matter.

9 Q. So it was a broad focus?

10 A. It was on that part of the business.

11 Q. But you also used the term "primarily"  
12 with "focus"; right? We were just discussing  
13 grammar. I am not an English teacher, but  
14 "primarily," that means first and foremost;  
15 correct?

16 A. Yes.

17 Q. You also discussed ADM's ethanol business  
18 with Gray Davis; is that correct?

19 A. Very briefly, yes.

20 Q. In your testimony this morning ADM--I'm  
21 sorry, you said ethanol came up a few times; is

1 that correct?

2 A. Yes.

3 Q. And you said specifically this morning  
4 that as you were preparing to leave, you asked Gray  
5 Davis whether he thought that MTBE contamination  
6 was adequately important to be a campaign issue for  
7 his run for Governor; is that correct?

8 A. That is correct.

9 Q. And he told you that he did not think it  
10 was of adequate importance to be an issue for his  
11 campaign; is that correct?

12 A. He didn't go into any great detail. He  
13 just said, no, he didn't, and that was the end  
14 of it.

15 Q. In fact, your testimony is, Mr. Davis  
16 responded that he did not think so. That is  
17 accurate; right?

18 A. Yes.

19 Q. Something happened--well, I'm sorry.  
20 Scratch that.

21 In your sworn statement in paragraph 2 you

1 say, quote, It was my understanding that the dinner  
2 was arranged in order for me and others to meet  
3 Mr. Davis, discuss his candidacy, comma--I'm sorry,  
4 no comma there--and assess whether to support his  
5 campaign.

6 That is your testimony; right?

7 A. Yes.

8 Q. You met Mr. Davis that evening; right?

9 A. That is correct.

10 Q. You discussed his candidacy; correct?

11 A. He discussed his candidacy, yes.

12 Q. You discussed it with him; correct?

13 A. We listened, yes.

14 Q. And something happened that night on  
15 August 4 that made ADM assess that it should  
16 support his campaign, didn't it?

17 A. I would have no idea about that.

18 Q. But less than two weeks later ADM gave  
19 Gray Davis \$100,000; right?

20 A. Again, I have no knowledge of that either.

21 Q. Who would have approved a donation of

1 \$100,000 to a political candidate in August of  
2 1998?

3 A. I would suppose any expenditure of that  
4 size would have to be President and Chief Executive  
5 Officer, Chairman of the Board, probably.

6 Q. Who was the President at the time?

7 A. I believe Alan was President and Chief  
8 Executive Officer.

9 Q. And in asking this, it is not to trip you  
10 up or to be a quiz. I really don't have a 10-Q or  
11 10-K in front of me. You believe Alan Andreas was  
12 the President at that time; is that correct?

13 A. I believe so.

14 Q. Would he have been one of the people who  
15 would be qualified to approve a \$100,000  
16 contribution to a political candidate?

17 A. I certainly can't say that for certain,  
18 but I would think that he would at least be aware  
19 of it.

20 Q. Would Dwayne Andreas, to your knowledge,  
21 be qualified to make that decision?



1       A.    I don't know if that decision would go  
2 before him.

3       Q.    How about Marty Andreas?  Would that have  
4 been a decision that went before him?

5       A.    It is possible, but I don't really know  
6 how that part of the business works.

7       Q.    When you say "that part of the business,"  
8 you mean that in 1998, you didn't know who approved  
9 campaign contributions?

10      A.    No, I did not, and I still don't, by the  
11 way.

12      Q.    I didn't mean to interrupt you.  You said  
13 you still don't know?

14      A.    No, I don't.

15      Q.    Did you ever during your tenure at Archer  
16 Daniels Midland recommend that the company make a  
17 campaign contribution to a candidate?

18      A.    No, I did not.

19      Q.    So, it is your testimony that you don't  
20 know who approved the \$100,000 donation that was  
21 made less than two weeks after the August 4 secret

1 meeting; is that correct?

2 A. Well, I don't know about a contribution,  
3 first of all, and if there was a contribution was  
4 made, I don't know who would have approved it.

5 Q. To your understanding, and having worked  
6 with Mr. Vind, ADM made a lot of political  
7 donations; right?

8 A. I have read that, yes.

9 Q. But you have also read that ADM didn't  
10 give just everybody \$100,000, did they?

11 A. I don't know what the contributions were.  
12 I have never seen the list.

13 Q. You would agree with me that it would be  
14 extraordinary for ADM to give somebody \$100,000 for  
15 state office within two weeks of meeting them;  
16 correct?

17 A. Again, I would have no idea. I have never  
18 seen a list or anything like that in the past.

19 Q. Are you familiar with a book called "The  
20 Informant"?

21 A. No, I have not.

1 Q. You have never heard of it?

2 A. I have heard of it. I am not familiar  
3 with it.

4 Q. Do you know what "The Informant" is about?

5 A. Not really. I have never read it.

6 Q. When you say, "not really," what is your  
7 understanding what "The Informant" is about?

8 A. I gather by the title and some of the--and  
9 the cover, that it has something to do with a case  
10 that the company--ADM--was involved in a few years  
11 ago.

12 MS. MENAKER: If I can interrupt, I'm  
13 sorry, for just one minute. Is that in evidence?

14 MS. CALLAWAY: I am going to use it to  
15 impeach--to cross-examine the witness on his  
16 credibility.

17 MS. MENAKER: And we don't have a copy of  
18 that exhibit that you are intending to use.

19 MS. CALLAWAY: I don't think it will be an  
20 exhibit. I really did not expect--and this is for  
21 the benefit of the Tribunal, President Veeder--I

1 did not expect, and am somewhat surprised, by  
2 Mr. Listenberger's testimony that he has no  
3 knowledge of political contributions given by  
4 Archer Daniels Midland.

5           PRESIDENT VEEDER: Let's just come back to  
6 the book for the moment. This book, "The  
7 Informant," by Kurt Eichenwald, is advertised on  
8 the piece of paper you referred us to before in  
9 regard to the video of the 10th of March, 1994.

10           MS. CALLAWAY: Yes, and, you know,  
11 absent-minded mother that I am, I brought up "The  
12 Informant" not as an advertisement, but in error.  
13 I have no interest in this. I have no financial  
14 interest in this book. I did think that what I  
15 wanted to show was in this book. It is actually  
16 the book "Rats In The Grain," and we have provided  
17 some excerpts from "Rats In The Grain," and let me  
18 ask if you are familiar with this book,  
19 Mr. Listenberger.

20           PRESIDENT VEEDER: Just before you go  
21 anywhere, what are we doing with "The Informant"

1 now?

2 MS. CALLAWAY: Nothing with "The  
3 Information." We're just going to put "The  
4 Informant" under the table right now.

5 PRESIDENT VEEDER: Fine. So, we are now  
6 coming to "Rats In The Grain"?

7 MS. CALLAWAY: We're now coming to "Rats  
8 In The Grain." I apologize.

9 BY MS. CALLAWAY:

10 Q. Are you familiar with a book called "Rats  
11 In The Grain"?

12 A. No, I am not.

13 Q. I believe that there is a portion of "Rats  
14 In The Grain" in the documents that were provided  
15 to you this morning.

16 Are you aware that political donations and  
17 the--well, publicly disclosed political donations  
18 have their information made available through the  
19 FEC, Federal Election Commission--are you familiar  
20 with that?

21 A. No, I am not.

1       Q.   Do you have any reason to doubt the  
2 information available through the FEC concerning  
3 the political contributions made to Gray Davis  
4 between May 28 of 1998, and September 24 of 1999?

5       A.   Do I have any what?

6       Q.   Do you have any reason to doubt the  
7 accuracy of that information?

8       A.   No. I don't have any knowledge about it  
9 at all, so I couldn't make a judgment one way or  
10 the other on that.

11      Q.   You have no reason to think that the  
12 Federal Election Commission would misrepresent  
13 something that was filed by ADM; right?

14      A.   Well, I certainly hope they wouldn't.

15      Q.   You don't have any basis to believe that  
16 they would, do you?

17      A.   No.

18      Q.   Is this the first time you are learning  
19 about the number of contributions and the amount of  
20 contributions made by ADM to Gray Davis?

21      A.   No. I read about it in the newspaper.

1       Q.    So, you are familiar with the fact that  
2    within two weeks after your meeting on August 4,  
3    ADM gave Mr. Davis \$100,000; right?

4       A.    I don't have any knowledge of the  
5    timetable of any contributions or the amounts,  
6    other than what I read in the newspaper.

7       Q.    Did you read about this in the Wall Street  
8    Journal, by any chance?

9       A.    I could have.

10      Q.    Turning to the documents that you have in  
11   the package I provided to you, there is a copy of a  
12   Wall Street Journal article.

13           PRESIDENT VEEDER:  Ms. Callaway, can you  
14   help us because we don't have any Wall Street  
15   Journal articles in our banks.

16           MS. CALLAWAY:  Yes.  I apologize.  It is  
17   7 JS tab 88.

18           MS. MENAKER:  It wasn't included in the  
19   witness's package, nor ours.

20           MS. CALLAWAY:  I apologize, and I would be  
21   happy to provide this copy to the witness.  Thanks.

1 (Pause.)

2 THE WITNESS: Okay.

3 BY MS. CALLAWAY:

4 Q. In reviewing this article, do you think  
5 that this might have been the newspaper in which  
6 you read about ADM contributions to Gray Davis?

7 A. I don't know. I don't really read the  
8 Wall Street Journal, but I may have seen it in a  
9 clipping or some other publication, but I couldn't  
10 say for sure what.

11 Q. In the second paragraph where it says,  
12 quote, According to an itinerary of the August 4  
13 visit, two of the seven officials scheduled to  
14 attend were ethanol industry executives, and two  
15 more were Archer Daniels' senior executives heavily  
16 involved in that company's ethanol business.

17 You would agree that you are one of the  
18 ethanol--you could be described at that time as an  
19 ethanol industry executive; correct?

20 A. I appreciate the title, but I was there.  
21 I don't know if they were making reference to me or



1 not.

2 Q. You were Vice President; right?

3 A. That is correct.

4 Q. Of fuel ethanol; right?

5 A. That is correct.

6 Q. So, it would be accurate to describe you  
7 as an ethanol industry executive; right?

8 A. I appreciate it, yes.

9 Q. In fact, that is how you were described  
10 when you spoke to the sugar lobby or other lobbies  
11 from time to time; is that correct?

12 A. I spoke one time, yes.

13 Q. But that is how you were described, isn't  
14 it?

15 A. I don't really remember.

16 Q. The two senior executives, that would have  
17 been Alan Andreas and Marty Andreas; correct?

18 A. I don't know. Those are the two that were  
19 there, but they were also talking about seven  
20 people here.

21 Q. Going to the last paragraph of the

1 article, quote, Archer Daniels officials deny  
2 attempting to influence Mr. Davis, saying they  
3 merely wanted to educate him on all the business  
4 their company does in California.

5           Is that an accurate statement, in your  
6 mind?

7       A.   Yes, but, they talked--as I mentioned  
8 before, they talked quite a lot of other things the  
9 company was involved in, particularly the  
10 nutraceutical side of the business.

11       Q.   But the company spokesperson focused on  
12 California; is that correct?

13       A.   They focused on California but also the  
14 other parts of the business, as I mentioned.

15       Q.   I understand your desire to provide your  
16 view. I am just asking you to read this last  
17 sentence. This doesn't talk about nutraceuticals,  
18 does it?

19       A.   No, it does not.

20       Q.   It doesn't talk about sugar, does it?

21       A.   No.

1 Q. Corn processing?

2 A. No, it does not.

3 Q. Talks about business that the company does  
4 in California; is that correct?

5 A. That is correct, and they did cover that.

6 Q. Now going back to political contributions,  
7 you testified you were aware of the \$200,000 that  
8 the company gave Gray Davis?

9 A. No, I was not aware of that. I was aware  
10 by reading the newspapers that there were some  
11 contributions made. The timing and the amount I  
12 was not aware of.

13 Q. Is this the first time that you've learned  
14 of the \$200,000 given to Governor Davis?

15 A. I have heard various amounts over the  
16 time, but I don't know what the exact amount was.

17 Q. Ms. Menaker didn't tell you about any  
18 amounts?

19 A. We didn't discuss the amounts, no.

20 Q. Did she discuss the fact of the  
21 contributions?

1       A.    We discussed that would be part of what  
2 the hearing was about.

3       Q.    So you knew I would ask you questions  
4 about contributions; right?

5       A.    I didn't think I could avoid it.

6       Q.    But you didn't go back and look at any  
7 information about the contributions?

8       A.    No, I did not.

9       Q.    You've stated that you are not familiar  
10 with the book called "Rats In The Grain," but I  
11 would like to ask you some questions. I am not  
12 offering this into evidence. I'd just like to  
13 cross-examine you on this.

14           MS. MENAKER: I apologize, but I believe  
15 when you asked that question, it was with respect  
16 to the other book, "The Informant." I don't know  
17 if you asked him if he was familiar with this book.

18           MS. CALLAWAY: I'm sorry, I thought I did  
19 ask him.

20           BY MS. CALLAWAY:

21       Q.    I thought you said you weren't familiar

1 with "Rats In The Grain"?

2 A. I am not familiar with the book, no. I  
3 know of it, but I have not read it, and I don't  
4 know what the content is.

5 Q. You don't know what the content is?

6 A. No. Other than looking at the cover.

7 Q. And the cover says The Dirty Tricks And  
8 Trials Of Archer Daniels Midland, The Supermarket  
9 To The World?

10 A. It doesn't say that.

11 Q. I guess we provided you with another  
12 cover.

13 PRESIDENT VEEDER: We do indeed have a  
14 different cover. That's not the cover that we  
15 have.

16 MS. CALLAWAY: The dirty tricks and trials  
17 of Archer Daniels Midland.

18 PRESIDENT VEEDER: That's what we have.  
19 We have nothing about any supermarket.

20 Before you turn to that page, we don't  
21 have that page.

1 BY MS. CALLAWAY:

2 Q. Let me just ask you this: Archer Daniels  
3 Midland was headquartered in or is still  
4 headquartered in Decatur, Illinois; is that  
5 correct?

6 A. Yes, it is.

7 Q. Dennis Hassert is the Speaker of the  
8 United States House of Representatives, is he not?

9 A. I believe so.

10 Q. And he hails from Illinois; is that  
11 correct?

12 A. I believe so.

13 Q. Did you ever attend any fund-raisers for  
14 Mr. Hassert?

15 A. No, I did not.

16 Q. Would you be surprised to learn that in  
17 the 1997-1998 election cycle for Dennis Hastert,  
18 the Speaker of the United States House of  
19 Representatives, Archer Daniels Midland donated  
20 \$1,500. Would that surprise you--

21 A. No, it would not.

1       Q.    Would it surprise you that in the 1997 and  
2 1998 election cycle, Archer Daniels Midland donated  
3 \$20,000 to a new Jersey Democrat running for the  
4 Senate, Bob Torricelli?

5       A.    I don't know what you mean by "surprise."

6       Q.    Would it seem unusual to you that a new  
7 Jersey Democrat would receive \$20,000 three  
8 consecutive election cycles when Denny Hastert only  
9 received \$1,500 from your company in only two of  
10 three election cycles?

11      A.    I would have no idea what was behind the  
12 decisions to make contributions.

13      Q.    So, you don't know what was behind the  
14 \$100,000 that you used to throw your support behind  
15 Mr. Davis after his dinner August 4, 1998; is that  
16 correct?

17      A.    I don't know anything about the dollar  
18 amount, but I would have no idea why contributions  
19 were made.

20      Q.    You have stated that you don't know  
21 anything about the dollar amount; right?

1       A.    That is correct.

2       Q.    Walking you through the time line, and I  
3   can point to the supporting documents for the  
4   Tribunal, if the Tribunal issue wishes, on May 28,  
5   of 1998, Mr. Davis received a contribution of  
6   \$5,000 from ADM. Were you aware of that?

7       A.    No, I was not.

8       Q.    On June 2, 1998, Davis received a  
9   contribution of \$5,000 from ADM. Were you aware of  
10  that?

11      A.    No, I was not.

12      Q.    Were you aware that Gray Davis had  
13  specifically asked Dick Vind to request a meeting  
14  with ADM?

15      A.    I would--I can only guess at this, and I  
16  would guess at the reason that Gray Davis came to  
17  Decatur with Dick Vind was because Dick Vind asked  
18  for the meeting.

19      Q.    You know Dick Vind; right?

20      A.    Yes, I do.

21      Q.    Do you have any reason to doubt Mr. Vind's



1 veracity, his truthfulness?

2 A. No.

3 Q. If Mr. Vind stated in a witness statement  
4 that Gray Davis asked him to request a meeting with  
5 ADM, would you have any reason to think that wasn't  
6 true?

7 A. No.

8 Q. Now, it was August 4, 1998, that you met  
9 Gray Davis; right?

10 A. Yes.

11 Q. And it was August 4, 1998, that you  
12 discussed ethanol a few times with Mr. Davis;  
13 right?

14 A. That is correct.

15 Q. And that you discussed your business in  
16 California with Mr. Davis; correct?

17 A. I didn't.

18 Q. I am sorry, that the company discussed it;  
19 is that correct?

20 A. Mr. Andreas did, yes.

21 Q. And it was on August 4 of 1998, that you

1 asked a very pointed question of Mr. Davis about  
2 MTBE; is that correct?

3 A. Yes, it was.

4 Q. And then it's August 17, 1998, less than  
5 two weeks later, that Mr. Davis received a  
6 contribution of \$100,000 from ADM; is that correct?

7 A. I have no idea.

8 Q. If it were true, that would indicate that  
9 ADM assessed the candidacy of Mr. Davis and decided  
10 to support his candidacy. Isn't that correct?

11 A. Again, I would have no involvement in that  
12 type of a decision. I don't know.

13 Q. You have stated in your witness statement  
14 that one of the purposes of the meeting was to  
15 assess whether to support his candidacy; is that  
16 correct?

17 A. I believe that is the way I put it, yes.

18 Q. Are you saying you had no role in that  
19 assessment?

20 A. I did not, no.

21 Q. You are saying that would have been for

1 the Andreases to decide?

2 A. Someone, not me.

3 Q. Have you talked about this case with Marty

4 Andreas?

5 A. No, I have not.

6 Q. How about with Alan Andreas?

7 A. No, I have not.

8 Q. Do you know whether Ms. Menaker or

9 Mr. Legum met with any of the Andreas family

10 regarding this case?

11 A. No, I don't.

12 Q. Now, after the--well, let me go back and

13 look at the time line.

14 You say that you weren't aware of the fact

15 of any of these contributions by ADM to Mr. Davis;

16 is that correct?

17 A. That is correct.

18 Q. But you were aware that Mr. Davis was

19 elected Governor on November 3 of 1998; correct?

20 A. I know he was elected Governor. I don't

21 know when the time was.

1       Q.   And you were aware that on March 25, 1999,  
2   Davis issued an Executive Order banning MTBE; is  
3   that correct?

4       A.   I know he issued the order.  Again, I  
5   don't know the exact date.

6       Q.   Well, you knew when that order was issued  
7   that it had been issued, didn't you?

8       A.   Yes, I did.

9       Q.   As an ethanol industry executive who kept  
10  an eye on what was going on with ethanol and the  
11  issues that affected ethanol, you were well aware  
12  of that, weren't you?

13      A.   Yes, I was.

14      Q.   And this was just seven months after  
15  meeting with you that first time in Decatur,  
16  wasn't it?

17      A.   Approximately, yes.

18      Q.   And just seven months after you asked Gray  
19  Davis if MTBE contamination was a big enough issue  
20  to be an issue in his campaign?

21      A.   Yes.

1       Q.   Now, as ADM's head of ethanol marketing at  
2 the time, the California MTBE ban required you to  
3 project how much additional ethanol would be  
4 required after the ban; is that correct?

5       A.   Yes, it was.

6       Q.   You would agree that the ban was good for  
7 ADM's ethanol sales, wouldn't you?

8       A.   It had the potential to be very good for  
9 the ethanol sales of the entire industry, yes.

10      Q.   In fact, ADM celebrated this ban, didn't  
11 they?

12      A.   I thought it was a good idea.

13      Q.   So by thinking it was a good idea, you  
14 celebrated, didn't you?

15      A.   I suppose, in our own way.

16      Q.   And by 2001, you publicly acknowledged in  
17 the media that ethanol would replace MTBE that was  
18 being sent to California, didn't you?

19      A.   Archer Daniels Midland? There could have  
20 been some news releases. I don't recall them.

21      Q.   Well, specifically I am asking about the

1 conference, the sugar conference you spoke at with  
2 the Mexican sugar company official--

3 A. Yes.

4 Q. You recall that conference?

5 A. I recall the conference, yes--I am sorry,  
6 with whom?

7 Q. I believe there was a Mexican sugar  
8 company official there as well?

9 A. It could have been. I spoke at Sun  
10 Valley, Idaho, to a sugar symposium.

11 Q. Yes, at the sugar symposium in Sun Valley.

12 A. But I don't know who was there.

13 Q. I won't quiz you on the guest list, but  
14 you do recall speaking at the sugar symposium?

15 A. Yes, I do.

16 Q. And you admit that ADM's ethanol sales  
17 increased after the MTBE ban; correct?

18 A. I don't remember if I spoke specifically  
19 about ADM. I think I spoke specifically about the  
20 increased demand for the fuel ethanol industry,  
21 because there were a lot of people there who were

1 in the sugar business that were interested in  
2 getting into the ethanol business.

3 Q. And excess sugar or surplus sugar can be  
4 converted to ethanol; is that correct?

5 A. Sugar can be, yes.

6 Q. And you at ADM had--and I say you at ADM,  
7 I don't mean you specifically, Mr. Listenberger,  
8 because I know you were with fuel ethanol, but ADM  
9 at the time of the MTBE ban had already determined  
10 that sugar consumption per person was unlikely to  
11 grow any further in the U.S.; is that correct?

12 A. I don't know. I didn't have anything to  
13 do with that.

14 Q. Because you weren't involved in the sugar  
15 side; is that correct?

16 A. Yes.

17 Q. You just spoke at the sugar symposium;  
18 right?

19 A. Yes.

20 Q. You will admit that ADM's ethanol--you  
21 will admit today, as you sit here, six years after

1 having met Mr. Gray Davis and five years after the  
2 MTBE ban, that ADM's sales of ethanol increased  
3 after that ban?

4 A. Yes, they did.

5 Q. I am almost finished, Mr. Listenberger,  
6 but I would just like to ask you a few questions  
7 before we break at 12:30. You no longer work for  
8 ADM, do you?

9 A. Not directly. I do do--I have a  
10 consulting project with them on another product.

11 Q. And through your consulting product, what  
12 is that--through your consulting project, what is  
13 that product that you consult on?

14 A. It is soy-based bio diesel.

15 Q. Are you with the National Ethanol Vehicle  
16 Coalition at this time?

17 A. Yes, I am a contract employee.

18 Q. And the mission of the National Ethanol  
19 Vehicle Coalition is to increase sales of vehicles  
20 that use E85, a fuel that is 85 percent ethanol; is  
21 that correct?



1       A.    And to promote the industry in general,  
2   yes, the 85 industry.

3       Q.    ADM is a member of the NEVC; correct?

4       A.    No, they are not.

5       Q.    ADM is a seller of ethanol, are they not?

6       A.    Yes, fuel grade--three kinds, fuel grade,  
7   beverage, and industrial.

8       Q.    And the NEVC looks to fuel grade ethanol;  
9   right?

10      A.    That is correct.

11      Q.    So, you went from marketing ethanol for  
12   ADM, to marketing cars that consume some of ADM's  
13   fuel grade ethanol?

14      A.    No.  I don't have anything to do with the  
15   automobile industry.

16      Q.    You don't work for the NEVC?

17      A.    That is correct.

18      Q.    So, you are promoting cars that use fuel  
19   ethanol; right?

20      A.    Yes.  My official title is Director of  
21   Fuel Networking, and what I do is help people set

1 up networks so they can deliver fuel ethanol into  
2 the marketplace.

3 Q. And the larger the network, the more  
4 ethanol that is consumed; correct?

5 A. Well, the more efficient. The 85 doesn't  
6 have the same privilege of large quantity of  
7 shipments that fuel grade ethanol does, and so  
8 there are a lot of costs associated with that, and  
9 I try and keep the costs down.

10 Q. But if your job is successful, more  
11 people, it is ideally, will be using these ethanol  
12 vehicles; right?

13 A. The more vehicles, the more E85 they will  
14 buy, and that is the goal, yes.

15 Q. That's right. And the more E85 they buy,  
16 the more ethanol that will be used to produce that  
17 E85; right?

18 A. That is correct.

19 Q. And you are currently under contract as a  
20 consultant to ADM?

21 A. Yes. It's just a two-month contract.

1 Q. And that is on a soy-based diesel?

2 A. Bio diesel.

3 Q. And that is a soy-blended product?

4 A. Soybean oil is the feedstock to make the  
5 soil methyl ester which is bio diesel.

6 Q. And on this two-month contract, what are  
7 your duties?

8 A. ADM has a couple of bio diesel plants in  
9 Europe, and some of the engineers associated with  
10 the construction and sales of bio diesel in Europe  
11 would like to--they would like to see if there is  
12 potential to build a bio diesel plant in the United  
13 States, and they are asking me to give them some  
14 contacts and introduce them to some of the people  
15 that I worked with at some of the major oil  
16 companies, the refiners.

17 MS. CALLAWAY: Thank you very much. I  
18 have no further questions.

19 MS. MENAKER: Can I take just one second?

20 PRESIDENT VEEDER: Yes.

21 (Pause.)

1           PRESIDENT VEEDER: Ms. Menaker?

2           MS. MENAKER: We have nothing on redirect.

3           PRESIDENT VEEDER: Mr. Listenberger, we  
4 have come to the end of your testimony. We have no  
5 questions for you from the Tribunal. Again, thank  
6 you for coming to be a witness at this hearing.

7           THE WITNESS: You're welcome.

8           MR. LEGUM: Excuse me, before we break for  
9 lunch--

10          PRESIDENT VEEDER: We are not breaking for  
11 lunch yet, but please continue.

12          MR. LEGUM: The Tribunal had asked a  
13 question about the penalty for violation of that  
14 provision of the city code. We have a copy of the  
15 penalty provision of the city code.

16          PRESIDENT VEEDER: Could you add that in  
17 to the materials we have. Is it copied for  
18 everybody?

19          MR. LEGUM: Yes, we have many copies.  
20 We'll distribute it.

21          PRESIDENT VEEDER: I wonder if Mr. Dugan

1 if he's available could come back and just inform  
2 us as to the likely timetable for this afternoon.

3 Before you disappear, Ms. Callaway, are  
4 you cross-examining Mr. Miller by telephone?

5 MS. CALLAWAY: Yes.

6 PRESIDENT VEEDER: Is there any preferred  
7 time for you to do that this afternoon? We have to  
8 confirm Mr. Miller at some stage.

9 MS. CALLAWAY: Your Honors--I'm sorry,  
10 Tribunal--

11 PRESIDENT VEEDER: Your Honors is fine.

12 MS. CALLAWAY: It is at the whim of the  
13 Tribunal.

14 PRESIDENT VEEDER: We don't like whim.

15 MS. CALLAWAY: If there is a time that the  
16 parties can agree to or if there is a time, of  
17 course, that is preferable to you, that is when we  
18 will schedule it.

19 PRESIDENT VEEDER: Well, subject to  
20 hearing more from Mr. Dugan, we might schedule  
21 Mr. Miller for 2:30. Is that a workable program or

1 not?

2 MS. CALLAWAY: That works for Methanex.

3 MR. LEGUM: I will ask my colleague Mark  
4 McNeill to address that.

5 PRESIDENT VEEDER: Mr. McNeill?

6 MR. MCNEILL: I will double-check with  
7 Mr. Miller. I think he was planning on going on a  
8 little later than that, but I'll double-check if  
9 he's available.

10 PRESIDENT VEEDER: We were trying to make  
11 it, more convenient for Mr. Miller. If it's  
12 inconvenient for 2:30--

13 MR. MCNEILL: If it is convenient for him,  
14 then he can go on at that time.

15 PRESIDENT VEEDER: We will wait for a  
16 moment. We'll get Mr. Dugan back, but he is the  
17 logical next witness at this stage.

18 (Pause.)

19 PRESIDENT VEEDER: Thank you, Mr. Dugan.  
20 We were just looking at the program for this  
21 afternoon. We have now finished the evidence of

1 Mr. Listenberger. It may be possible to list  
2 Mr. Miller for 2:30, provided his cross-examination  
3 doesn't raise any of the disputed Regent  
4 International documents. Otherwise, we could  
5 resume the argument on the U.S. motion.

6 MR. DUGAN: We would definitely prefer to  
7 do that, and we'll make sure that the  
8 cross-examination of Mr. Miller does not use any of  
9 the Vind documents.

10 PRESIDENT VEEDER: So when you say prefer  
11 to do that, you mean--

12 MR. DUGAN: To put Mr. Miller on first to  
13 and then just to give us a little bit of extra time  
14 to address the issues. And with respect to  
15 Mr. Vind, what I'd like to do is that if we are not  
16 able to address the evidentiary issues this  
17 afternoon, I would like to go forward with the  
18 examination of Mr. Vind, not using any of the  
19 disputed documents, and it may well be that we  
20 we're not able to assemble our response both  
21 factually and legally to the new evidence that the

1 United States put in today until tomorrow morning,  
2 and if that is the case, we don't want to disrupt  
3 the schedule, and we'll just--we won't use any of  
4 the Vind documents in the cross-examination.

5 PRESIDENT VEEDER: As we understand it, at  
6 least as regards Mr. Miller, none of the disputed  
7 documents will be put to Mr. Miller in  
8 cross-examination?

9 MR. DUGAN: That is correct.

10 PRESIDENT VEEDER: Mr. McNeill, it is over  
11 to you. If we can get Mr. Miller for 2:30.

12 MR. MCNEILL: I can confirm that  
13 Mr. Miller is indeed available at 2:30.

14 PRESIDENT VEEDER: Again, just give us  
15 some time, your evidence in chief with him will be  
16 how long?

17 MR. MCNEILL: Five minutes.

18 PRESIDENT VEEDER: Five minutes. And who  
19 is cross-examining? Ms. Callaway, again, we are  
20 not holding you to it but just for administrative  
21 purposes, how long do you think in



1 cross-examination?

2 MS. CALLAWAY: Less time than  
3 Mr. Listenberger. More time than Mr. Weinstein. I  
4 would say 50 minutes to an hour.

5 PRESIDENT VEEDER: So, let's say an hour.  
6 It looks as though we will be coming back to you,  
7 Mr. Dugan, between 3:30 and 4:00. Let's proceed on  
8 that basis.

9 MR. DUGAN: That's right.

10 PRESIDENT VEEDER: Well, let's proceed on  
11 that basis.

12 MR. LEGUM: May I add one other note,  
13 which is my understanding is that Mr. Vind has a  
14 flight at 7:00 this evening from Dulles which means  
15 that normally he would need to leave if he's going  
16 to make that flight at 4:30.

17 PRESIDENT VEEDER: At 4:30. Well, I think  
18 that changes the picture. Is it possible for him  
19 to put his flight back?

20 MR. LEGUM: I don't know. We were working  
21 on the assumption that the hearing day would end at

1 5:30.

2           PRESIDENT VEEDER: The alternative is if  
3 your cross-examination, Mr. Dugan, would not  
4 involve the Regent International documents, we  
5 could start with Mr. Vind at 2:30.

6           MR. DUGAN: We could. I am not sure I  
7 will be done by 4:30 in any case. If that is the  
8 time when he has to leave, that could cause a  
9 problem.

10          PRESIDENT VEEDER: Can we leave you two to  
11 discuss between the two? I think we have a problem  
12 with Mr. Vind whatever happens, whether we start  
13 with him at 2:30 or a later time. If you could see  
14 if he could get a later flight, it would I think  
15 facilitate enormously our task.

16          MR. LEGUM: We will look into it.

17          PRESIDENT VEEDER: Thank you. But  
18 otherwise, let's break now and resume at 2:30.

19               (Whereupon, at 12:38 p.m., the hearing was  
20 adjourned until 2:30 p.m., the same day.)

21

1                   AFTERNOON SESSION

2                   PRESIDENT VEEDER:  Let's resume.

3                   As we understand it, Mr. Vind is available  
4 to give evidence now and has put his flight back at  
5 the request of the Tribunal, and as we also  
6 understand it, Mr. Dugan, you will be  
7 cross-examining Mr. Vind, at least initially,  
8 without reference to the so-called Regent  
9 International documents.

10                  MR. DUGAN:  That's correct.

11                  PRESIDENT VEEDER:  Just to get some better  
12 idea of the estimate, originally I think it was  
13 indicated that Mr. Vind would be cross-examined for  
14 two hours.  Is that still the estimate without  
15 reference to the Regent International documents?

16                  MR. DUGAN:  I don't think it will take  
17 that long.

18                  PRESIDENT VEEDER:  Let's proceed then.

19                  It was my understanding that we will start  
20 with Mr. Miller first and then Mr. Vind?  I thought  
21 the idea was to endeavor that we would finish with

1 Mr. Vind, that we would start with him at 2:30, but  
2 I may have misunderstood. I understood Mr. Miller  
3 might take over an hour.

4 MR. DUGAN: Right, but I thought you were  
5 going to give us another hour to go back down and  
6 see whether we can address the evidentiary motion  
7 this afternoon and that if we can't, then I would  
8 cross-examine Mr. Vind without the Regent  
9 documents. I thought we had decided that Mr.  
10 Miller was going to go next.

11 MR. MCNEILL: We are happy to do whatever  
12 the Tribunal wishes. Our understanding was that  
13 Mr. Miller would go at 2:30, but we are happy to do  
14 it either way.

15 PRESIDENT VEEDER: We have to be certain  
16 that we conclude the evidence with Mr. Vind so that  
17 he gets his flight. Is that still possible,  
18 Mr. Dugan?

19 MR. DUGAN: That is still very likely,  
20 yes.

21 PRESIDENT VEEDER: Very likely. It's all

1 we can ask, maybe. In the light of what counsel  
2 has said, we'll start with Mr. Miller, then. And  
3 Mr. Miller I think is available at the end of the  
4 telephone, and we'll see what happens next.

5 (Pause.)

6 MR. MCNEILL: Mr. President, Mr. Singh is  
7 apparently having trouble contacting Mr. Miller  
8 right now, but I spoke with him not too long ago,  
9 and he is there, and so we should be able to  
10 contact him shortly.

11 PRESIDENT VEEDER: Whilst we have a few  
12 minutes, shall we just go through the three new  
13 documents you put in. Is that you, Mr. Legum, who  
14 will address this?

15 MR. LEGUM: Yes, I would be happy to do  
16 that.

17 PRESIDENT VEEDER: Can you just identify  
18 them for us. Can we take X11?

19 MR. LEGUM: X11 is a satellite photograph  
20 of the area in which Mr. Vind's apartment is.  
21 Excuse me, apartment--office is.

1           PRESIDENT VEEDER: X12 is a blow-up?

2           MR. LEGUM: Exactly.

3           PRESIDENT VEEDER: And if you would just  
4 help us identify where the office might be.

5           MR. LEGUM: I think it is easiest if we  
6 looked at X13, which corresponds to the same area.  
7 If we look at X13, roughly towards the center of  
8 this document there is a reference to Embassy  
9 Court. Can you find that? That is the building.  
10 So, it is not where the words appear, Embassy  
11 Court, but you can see there is a line that points  
12 to it.

13          PRESIDENT VEEDER: Can you just by  
14 reference to the documents we had this morning,  
15 that's X8 to X10, just orientate the photographs by  
16 reference to this Embassy Court?

17          MR. LEGUM: I can try, but let me--I will  
18 try subject to correction by Mr. Vind who, unlike  
19 me, has actually been there.

20          If we look at X8, the top photograph, I  
21 believe, is taken--you see where it says

1 Robinson's, on the map?

2 PRESIDENT VEEDER: On the map?

3 MR. LEGUM: Yes. That is currently a J.C.

4 Penney's store, but I believe that was taken with

5 the photographer's back to Robinson's. So you see

6 on the right-hand side, Mr. Vind's former building,

7 Embassy Court, and on the left-hand side, the

8 Embassy Suites Hotel and the little drive-through

9 there.

10 Is that clear?

11 PRESIDENT VEEDER: Yes.

12 MR. LEGUM: Is it right? Is it correct?

13 That is my understanding, but I am not the witness.

14 Would it be better if I use the ELMO?

15 PRESIDENT VEEDER: Yes, yes.

16 MR. LEGUM: I am not necessarily

17 proficient with it, but I'll give it a try.

18 PRESIDENT VEEDER: As soon as Mr. Miller

19 is available, we will interrupt you.

20 (Pause.)

21 MR. LEGUM: So looking again at X8, my

1 understanding--and, again, I am not the witness--is  
2 that that photograph was taken from this vantage  
3 point.

4           The second photograph I believe was taken  
5 from this vantage point, and the third photograph,  
6 as I understand it, was taken from about there.

7           Turning to X9, I believe that is another  
8 shot taken from about here, the first one, the top  
9 left one, that is. And then the next one is quite  
10 similar to the photograph that we have seen  
11 already, which was taken from about here, and the  
12 third was taken from there. And the fourth is  
13 essentially the same.

14           Turning to X10, it should now be fairly  
15 clear. I think the only new vantage point that we  
16 see is that in the bottom two photographs, and I  
17 believe that the first of those was taken from this  
18 vantage point, and the second, from probably here.  
19 I think you can see the Buddha-like image, as you  
20 described it earlier, very small in the bottom left  
21 photograph, and you just see it a little larger--is



1 that right? I really don't know.

2 PRESIDENT VEEDER: The Buddha-like image I  
3 think is between the Embassy Courts and the Embassy  
4 Suites.

5 MR. LEGUM: Is there anything more I can  
6 usefully do?

7 PRESIDENT VEEDER: No, thank you very  
8 much.

9 (Pause.)

10 PRESIDENT VEEDER: There's been an  
11 objection intimated by the United States to the  
12 materials we've just received from Methanex, which  
13 Methanex intends to put in cross-examination to  
14 Mr. Miller.

15 So we turn to you first, Ms. Callaway, to  
16 explain the particular purpose of these documents,  
17 assuming that Mr. Miller is not listening to this  
18 conversation.

19 MS. CALLAWAY: Thank you very much.

20 The United States has proffered Mr. Miller  
21 as an expert, and it is within our privilege

1 to--and I don't mean that in the sense of  
2 attorney-client privilege or work product  
3 privilege. It is we are granted the right to  
4 establish somebody's expertise, and I believe  
5 that--I would like to ask Mr. Miller some questions  
6 regarding the DeWitt materials that he is one of  
7 the named authors on. It is in no way intended to  
8 harass Mr. Miller. I anticipate that his testimony  
9 will take about 20 minutes including the documents.

10 PRESIDENT VEEDER: I think the concern  
11 expressed by the United States was in reference to  
12 our order of the 28 of May, paragraph seven, where  
13 we recorded the agreement of the parties and the  
14 intent of the Tribunal that the scope of  
15 cross-examination shall be confined to the scope of  
16 the witness's written testimony and any additional  
17 evidence in chief. Now, we leave aside  
18 credibility, but you intend to live within the  
19 scope of this particular order?

20 MS. CALLAWAY: Yes, I do, because I know  
21 that Mr. Miller is not listening at this time.

1 These DeWitt reports contain information that, if  
2 taken into consideration by Mr. Miller, would  
3 affect the scope--or, I'm sorry, would affect--I  
4 don't know how to say it in a fancy way--the bottom  
5 line of his testimony, and I would like to ask him  
6 some questions about what was taken into  
7 consideration and why.

8           And it is not my intent--candidly, I don't  
9 think I am smart enough to get around the May 28th  
10 order, but it is certainly not my intent to get  
11 around that order. It is really to--I will give it  
12 all away, it is to show that you can ask a  
13 question, and in answering it, you can get one  
14 answer if you take certain things into  
15 consideration and exclude others, but if you bring  
16 in those other things, your answer does change.

17           I know it's a real novel concept in  
18 cross-examining an expert, but it is important.

19           PRESIDENT VEEDER: Now, we can either  
20 debate this further or wait until each question  
21 arises to see its particular context. But if you

1 want to come back to any of that--

2           MR. MCNEILL: I think it might be helpful  
3 for the Tribunal if I just describe for you the  
4 scope of the Miller expert report. If you look at  
5 paragraph five of that report, on the second page,  
6 there are four numbers there. Those numbers  
7 represent methanol demand in California during  
8 those four years. They were created in response to  
9 four numbers in the second Macdonald affidavit,  
10 which were Methanex's export numbers for those  
11 years. There is no--there is--everything else in  
12 the report, of substance, basically explains how  
13 those numbers are derived.

14           There is nothing qualitative in the report  
15 about MTBE, the merits of MTBE, the merits of  
16 methanol. It is strictly an economic study that  
17 looks at the demands for methanol in those four  
18 years.

19           Now, if you look at the DeWitt reports,  
20 those have to do with MTBE, not methanol. And, as  
21 you can see, they are opinion pieces. I will also

1 draw your attention to the exhibit, to the upper  
2 right-hand corner of the exhibit that I was handed.  
3 It says July 31, 2003. If you look at the four  
4 years in the Miller report, those four years are  
5 1998 to 2001. I really see no relationship between  
6 the substance of these DeWitt reports and  
7 Mr. Miller's strictly economic study.

8 PRESIDENT VEEDER: Again, as we understand  
9 it, what you used paragraph five for was for the  
10 purpose of your submissions on day two. This was  
11 page 22 of the handout that you provided us.

12 MR. MCNEILL: Yes, that is correct. We  
13 took Mr. Miller's information, and we compared it  
14 to information we were given by Methanex. That  
15 chart was created by us, but Mr. Miller just  
16 provided us these four numbers, and his expert  
17 report is limited to these four numbers  
18 representing methanol demands, and it has nothing  
19 to do with MTBE, which the DeWitt reports have to  
20 deal with. We are willing to take it question by  
21 question, but I think you can see at the outset

1 that we are already way outside the scope of the  
2 Miller report.

3 MS. CALLAWAY: I don't know if you would  
4 like to take it question by question--

5 PRESIDENT VEEDER: We think the most  
6 efficient way of dealing with now is we have  
7 understood the context of the debate. We have  
8 understood your position, Ms. Callaway. So, we  
9 will take it question by question, and obviously if  
10 a specific objection is taken to a particular  
11 question, we will revisit this.

12 MS. CALLAWAY: Thank you.

13 DEXTER MILLER, RESPONDENT/PARTY'S WITNESS, CALLED

14 PRESIDENT VEEDER: I just wonder if  
15 Mr. Miller is now available.

16 I am told everything is established now  
17 and we are waiting for Mr. Miller to call in, and  
18 when he does, it will come through on the speaker,  
19 which is on the table over there.

20 Mr. Miller? It is Johnny Veeder. I am  
21 the Chairman of the Arbitral Tribunal. I am here

1 with two colleagues and with the parties' legal  
2 representatives.

3 THE WITNESS: Yes, I understand.

4 PRESIDENT VEEDER: What I am going to ask  
5 you first is to ask you if you are willing to make  
6 a declaration as a witness. I will read out the  
7 words of the declaration, and if you are willing to  
8 make the declaration, I will repeat it phrase by  
9 phrase.

10 THE WITNESS: Okay.

11 PRESIDENT VEEDER: But this is the  
12 declaration we invite you to make. I solemnly  
13 declare upon my honor and conscience that I shall  
14 speak the truth, the whole truth, and nothing but  
15 the truth.

16 THE WITNESS: Yes.

17 PRESIDENT VEEDER: Are you willing to make  
18 that declaration?

19 THE WITNESS: Yes, I am.

20 PRESIDENT VEEDER: If you'll repeat it  
21 after me, phrase by phrase.

1           THE WITNESS:   Okay.

2           PRESIDENT VEEDER:  I solemnly declare--

3           THE WITNESS:  I solemnly declare--

4           PRESIDENT VEEDER:  --upon my honor and

5  conscience--

6           THE WITNESS:  --upon my honor and

7  conscience--

8           PRESIDENT VEEDER:  --that I shall speak

9  the truth--

10          THE WITNESS:  --that I shall speak the

11  truth--

12          PRESIDENT VEEDER:  --the whole truth--

13          THE WITNESS:  --the whole truth--

14          PRESIDENT VEEDER:  --and nothing but the

15  truth.

16          THE WITNESS:  --and nothing but the truth.

17          PRESIDENT VEEDER:  Now, Mr. Miller, you

18  are going to be asked some questions, starting with

19  Mr. McNeill for the United States.

20          THE WITNESS:  Yes.

21          PRESIDENT VEEDER:  Mr. McNeill.



1 DIRECT EXAMINATION

2 BY MR. MCNEILL:

3 Q. Mr. Miller, good afternoon.

4 A. Good afternoon.

5 Q. This is Mark McNeill from the State  
6 Department on behalf of the United States.

7 A. Yes, go ahead.

8 Q. Do you have a signed copy of your expert  
9 report dated December 4, 2003, in front of you?

10 A. Yes, I do.

11 Q. Do you reaffirm that the contents of the  
12 expert report are true and correct to the best of  
13 your knowledge?

14 A. Yes, there is one minor typographical  
15 error back down in paragraph number nine, which  
16 reads that the output of the four MTBE plants, and  
17 it should be five, that it was referred to in six,  
18 in paragraph six. That is just a typo. Otherwise,  
19 I stand by it.

20 Q. The third line in paragraph nine, just for  
21 clarity, should read the output of the five MTBE

1 units?

2 A. That's right, yes.

3 Q. Mr. Miller, Can you describe for the  
4 Tribunal your professional background, please.

5 A. Okay. I was an engineering graduate of  
6 Princeton University. I served in the United  
7 States Navy in World War II, in an engineering  
8 capacity for the Naval Research Laboratory in  
9 Washington. After the war, I got a Master of  
10 Science degree, again, at Princeton. And then in  
11 1949 I joined the M.W. Kellogg Company and served  
12 with them for about 31 years working in a wide  
13 variety of research and later management  
14 capacities, ending up as the Chief Project Manager  
15 and Director of Strategic Planning.

16 I retired from Kellogg in 1981, and I  
17 worked then for six years at Fische Engineering and  
18 Construction, which is another engineering and  
19 procurement firm in Houston, working on a lot of  
20 international design and construction operations,  
21 and one of these was a feasibility study for a

1 proposed MTBE plant in Aruba, which never got  
2 built.

3 I then joined the consulting firm of  
4 DeWitt & Company in 1988, where I worked for a lot  
5 of international markets and studies for MTBE,  
6 looking on government and industry data to see how  
7 gasoline is supplied and made, and we did a lot of  
8 work for estimates to clients for supply and demand  
9 and so forth. I retired finally from DeWitt in  
10 August of 2003, and I have been an independent  
11 consultant ever since.

12 Q. Thank you.

13 To the best of your knowledge, what was  
14 the exact date that you left DeWitt?

15 A. I resigned from DeWitt in July of--as of  
16 July, in the middle of July, 2003. I didn't  
17 officially leave them until August, but I had  
18 nothing to do with them after July. I was on  
19 vacation.

20 Q. Thank you. And just to clarify, you said  
21 your current employment. Can you describe that

1 again?

2 A. I am an independent consultant. My major  
3 client at the moment is Jim Jordan & Associates  
4 here in Houston, and they are a petrochemical  
5 expelling firm mostly working in the methanol area.

6 Q. Thank you.

7 Mr. Miller, can you describe for the  
8 Tribunal the principal conclusions of your expert  
9 report.

10 A. Okay. We were asked by you to determine  
11 how much MTBE was made in California for the years  
12 1998 through 2001. Now, this, I might say to begin  
13 with, is distinguished from the amount of MTBE used  
14 in California, and to be made in California it is  
15 done in five plants. These are at BP at the Carson  
16 Watson refinery, 2,500 barrels a day; two plants of  
17 Chevron, one at El Segundo at 2,000 barrels a day;  
18 and another at Richmond in the north at 2,300  
19 barrels a day.

20 In addition, Tesoro has a 2,300 barrel a  
21 day MTBE plan in San Francisco at the old Avon

1 refinery, and then Valero had a somewhat larger  
2 plant, 4,000 barrels a day at Benecia. These total  
3 about 13,100 barrels a day.

4           Aside from this, there was no MTBE made in  
5 California, and what that means is that methanol  
6 coming into California for MTBE purposes would have  
7 to go only to these plants because there are no  
8 other plants that could make it.

9           All right. Based on that, we looked at  
10 the amount of MTBE that was used in California, and  
11 starting from 2000, the California Energy  
12 Commission has published on a quarterly basis the  
13 amount of MTBE used in every refinery in California  
14 including the five refineries that we just talked  
15 about. This data shows that from 2000 onward, all  
16 of these refineries ran at substantially the same  
17 rate as far as MTBE is concerned. That is to say,  
18 that the Chevron plant at Richmond used--had a  
19 2,300 barrel a day capacity. It ran at that in  
20 2000. It ran at 2,450 in 2001, 3,725 and 4,700.  
21 This means, of course, that they were getting MTBE

1 from somewhere else.

2           Every other refinery on this list used  
3 much more MTBE than the small plants that they had  
4 in the refineries which would require--since they  
5 were using this essentially and because refineries  
6 in California are running flat-out or nearly so, we  
7 estimated that all four of these plants continued  
8 to operate at least through 2001. That was the  
9 period you asked for. Actually, they continued  
10 operating well into 2003.

11           On that basis, and bearing in mind that  
12 the demand in California was going up all the time,  
13 we estimated that they ran at 11,000--11,5, 12,6  
14 and 12.1 thousand barrels a day capacity, or at  
15 about 90 percent of capacity through 2001.

16           We then convert this back to methanol. To  
17 begin with, a barrel of--a thousand barrels a day  
18 of MTBE is 43,134 tons per year of MTBE, and each  
19 ton of MTBE requires 0.363 tons of methanol to  
20 produce it, and that is based simply on the  
21 chemistry involved. So that this then came up with

1 the eventual conclusion--which is shown in  
2 paragraph five, requiring 172.2 thousand tons of  
3 methanol in '98, and then going up to 197 in 2000  
4 and then falling off in 2001.

5 All of this data came from the--from  
6 reliable sources such as the Department of Energy,  
7 which listed all of these refineries having this  
8 MTBE capacity; from the California Energy  
9 Commission, which published the amount of methanol  
10 concerned; and then balancing this against the  
11 imports provided by the Census Bureau for MTBE, and  
12 the whole MTBE picture balances well with these  
13 plants in operation.

14 So I was fairly well convinced, quite well  
15 convinced, that these plants were running  
16 throughout this whole period at essentially their  
17 80 to 90 percent capacity.

18 Q. Okay. Can you describe very briefly the  
19 conclusion of your expert report?

20 A. I can say--can you speak a little louder.  
21 I couldn't quite hear that.

1       Q.   Can you--drawing your attention to  
2 paragraph 5, can you describe briefly the  
3 conclusion of your expert report.

4       A.   Well, based on this information that I  
5 just gave you, we calculate that the amount of  
6 methanol demand for MTBE for production in plants  
7 in California, between 1998 and 2001, was 172.2  
8 thousand tons of methanol in '98, going up to  
9 189.45 thousand tons in 2001.

10           MR. MCNEILL:  Thank you.  That is all I  
11 have.

12           PRESIDENT VEEDER:  Thank you.

13           Ms. Callaway.

14                       CROSS-EXAMINATION

15           BY MS.CALLAWAY:

16       Q.   Good afternoon, Dr. Miller.

17       A.   It is Dexter Miller, not Doctor.  But go  
18 ahead.  I didn't quite make it to the--I just made  
19 it through to the master's degree, but that's all  
20 right.

21       Q.   As my father used to say, Ph.D.s teach and



1 Masters do. It is really an honor to have an  
2 opportunity to ask you questions today, and I would  
3 like to ask you about the information contained in  
4 your expert report.

5 A. Yes, ma'am.

6 Q. Your expert report very clearly sets out  
7 the information that you derived regarding about 15  
8 percent of the total MTBE used in California for  
9 the years '98, '99, 2000, and 2001; is that  
10 correct?

11 A. That is about right. Actually the use in  
12 California in 2000 was 99,000 barrels a day. So  
13 that would be compared to the--12, 15 percent, it's  
14 in that range. What I'm saying is simply that the  
15 total demand for MTBE in California during this  
16 whole period was much larger than simply these  
17 four--these five plants.

18 Q. And when I did my reverse math--and I will  
19 admit that I do not have an engineering degree from  
20 Princeton--I backed this out, and for each year I  
21 found an average of about 565,000 tons of MTBE

1 produced by these five refineries.

2 A. Yes, that is about right--actually, that  
3 is a little high.

4 Q. It is sort of an average, I would say, and  
5 the reason I ask this is you based this on  
6 information that you had available to you, and your  
7 personal knowledge and experience; right?

8 A. That is right.

9 Q. And in doing so, you assumed, based on  
10 your personal knowledge and experience, that the  
11 total MTBE tons produced by these five refineries  
12 remained somewhat constant during those four years.

13 A. That is correct. It varied, but not by  
14 more than 10 percent one way or the other.

15 Q. Now, your analysis, and I am reading from  
16 paragraph six, states that the 13,100 barrels per  
17 day of MTBE, that nominal capacity, is only about  
18 15 percent of the total MTBE used in California; is  
19 that correct?

20 A. Yes, that is what it says. I am not sure  
21 that is exactly accurate, but it is close.

1       Q.    Right.  Close enough for horseshoes and  
2 hand grenades; right?

3       A.    Yes.

4       Q.    And for your report as well; right,  
5 Mr. Miller?

6       A.    I can tell you that in 2000 and 2001, just  
7 reading it right in front of me, there was 99,000  
8 barrels a day of MTBE used in California; in 2000  
9 and 89.9 in 2001, so that compares to the 10, 11,  
10 or 12 estimate, as we have indicated.

11           PRESIDENT VEEDER:  Excuse me one second,  
12 Mr. Miller.  Did you say 9,000 barrels a day or  
13 90,000 barrels a day?

14           THE WITNESS:  90,000.  California uses  
15 about a million barrels a day of gasoline.  A  
16 little less, about 900,000.  The law in California  
17 requires 28 percent oxygen in all that gasoline,  
18 and that translates to about 99,000 barrels a day  
19 of MTBE use for the purpose.

20           BY MS.CALLAWAY:

21       Q.    And in paragraph six of your expert

1 report, your last sentence observes that the  
2 balance of the MTBE used by the refiners was  
3 primarily imported; correct?

4 A. That is right. Well, imported and  
5 transferred in from elsewhere.

6 Q. Right. I mean imported, rather it's  
7 interstate or international?

8 A. That is right.

9 Q. So when I say "imported," I mean Canada,  
10 the Middle East, Asia, Texas and Wyoming, and  
11 Texas, just as you do?

12 A. Yeah, right.

13 Q. Now, did your--were you asked to look at a  
14 decline at all in imports to California of methanol  
15 for the purpose of refining MTBE?

16 A. No.

17 Q. That information would have been easily  
18 available if you were asked to do so; is that  
19 correct?

20 A. Well, I am not so sure. It is beyond my  
21 immediate expertise, but we do know that methanol

1 gets imported into, you know, from various places  
2 and certainly some of it--it had to come from  
3 somewhere, and Canada was a good source for it. On  
4 the other hand, simply the fact if that is when  
5 methanol was imported into the state doesn't mean  
6 it was used for MTBE. It could be used for other  
7 purposes.

8 Q. Let me rephrase my question because I said  
9 "easily available," and I think that in using that  
10 term, I meant to somebody of your experience and  
11 your stature within the global oxygenate and fuel  
12 communities. So let me rephrase that question.

13 A. Okay.

14 Q. If you had been asked to measure an  
15 increase or decline in the import of methanol to  
16 California for these years for the purpose of being  
17 refined into MTBE, that is information that you  
18 would have sought to track down; is that correct?

19 A. That is true, but on the other hand,  
20 this--the MTBE production that we are talking  
21 about, from these five different plants, they all

1 had to use methanol, and it had to come from  
2 somewhere because nobody in California makes it.

3 Q. Right.

4 A. So if it didn't, it came from wherever.

5 Q. Right. Did you also look at the year  
6 2002?

7 A. Yes.

8 Q. And did you see a decrease in the year  
9 2002?

10 A. Actually not--a slight decrease, yes, but  
11 not a big one. The 2002 was just about the same as  
12 2001 until the last quarter, and then it really  
13 dropped off.

14 Q. And it really dropped off in the last  
15 quarter?

16 A. In the last quarter of 2002, and in  
17 2003--by the end of 2003, there wasn't any used,  
18 but in the first quarter of 2003, methanol use for  
19 MTBE--MTBE use in California drops by 75 percent.

20 Q. And that was just in the first quarter of  
21 2003; is that correct?

1       A.    Just in the first quarter.  Now, what  
2   happened there it is fairly straightforward, and  
3   that is the gasoline that formerly contained MTBE  
4   had to have ethanol put in to replace it.  You  
5   can't mix the two.  Starting the beginning in 2003,  
6   the pipelines began to accept only gasoline  
7   suitable for blending of ethanol.  That was the  
8   case--all of a sudden, it was just a big drop, and  
9   everybody was switching over to ethanol.

10       Q.   Dr. Miller--

11       A.    Yes, ma'am.

12       Q.    It is awkward to ask you questions without  
13   being able to see your face, and I am sorry if I am  
14   kind of slow in doing this.

15               Your report also indicates that the demand  
16   for MTBE and methanol declined at the same time; is  
17   that correct?

18       A.    Well, the demand for MTBE and the demand  
19   for methanol for use in MTBE had to go down at the  
20   same time, surely.

21       Q.    Right.  And is it your testimony that the

1 demand for ethanol was increasing at the same time?

2 A. Oh, yes.

3 Q. And as a scientist, and as somebody who is  
4 retained as an expert, you would testify that there  
5 is a corresponding relationship between the  
6 decreasing demand for the MTBE and methanol and the  
7 increasing demand for ethanol?

8 A. Oh, absolutely, because one has to be  
9 substituted for the other in the same gasoline.

10 Q. Your testimony talks about the 15 percent  
11 of the MTBE produced by the five refineries. What  
12 about the other 85 percent? How do you account for  
13 that?

14 A. That was all brought into California as  
15 MTBE.

16 Q. And you are assuming that it was indeed  
17 brought in at the 90,000 barrels a day--

18 A. We know that much was used because all  
19 kinds of data can come to the same conclusion. The  
20 government data shows they used that much. The  
21 imports of MTBE published by the Census Bureau show



1 that that much came into California. It all kind  
2 of adds up. Sometimes you have to juggle the  
3 numbers a little bit, but they do agree in general.

4 Q. And it is the availability of that data  
5 that allowed even me to back out that 565,000 tons  
6 produced give or take amount; right?

7 A. Yes.

8 Q. You are testifying as a global gasoline  
9 and oxygenate expert; correct?

10 A. Well, I guess you might say so, yes.

11 Q. I have no reason to flatter you, but that  
12 is what you are here for; right?

13 A. Yes, ma'am.

14 Q. And as part of your expertise and during  
15 your time working with DeWitt, you were one of the  
16 authors of the MTBE Oxygenates and Clean Fuels  
17 Newsletter; is that correct?

18 A. I contributed to them, yes.

19 Q. And did you contribute an analysis of MTBE  
20 production in California at any time?

21 A. Yes, frequently.

1       Q.    In doing those analyses of MTBE production  
2   in California, did you take a number of market  
3   factors into account?

4       A.    I am not sure I understand what you mean  
5   there.

6       Q.    To be honest, I don't think I asked a very  
7   good question.

8               When you were analyzing MTBE production in  
9   California and projecting future MTBE needs or  
10   productions in California, did you look to current  
11   and future regulation in making your analyses?

12       A.    Well, yes, we tried to look at the  
13   requirements of the laws, and as we thought they  
14   might change. We tried to anticipate what might  
15   happen when California switched over from using  
16   MTBE to ethanol, and it worked out more or less as  
17   we expected with some difficulties we all know  
18   about.

19       Q.    When you say "it worked out more or less  
20   as we expected," what had you expected?

21       A.    What I had expected was that they would be

1 able to make the transition but that it would be  
2 costly and that the price of gasoline would be  
3 somewhat higher than it had been before, and that  
4 is what happened.

5 Q. Did you anticipate any environmental  
6 effects from the switch from MTBE to ethanol?

7 MR. MCNEILL: Mr. Miller, I'm going to  
8 stop you for one second. I am going to object  
9 here. Ms. Callaway is asking about anticipated  
10 effects, environmental effects of the switch from  
11 MTBE to ethanol. This is very, very, very far  
12 outside the scope of analyzing simply  
13 four--methanol demand for four years. As I said,  
14 Mr. Miller's report is based simply on an economic  
15 study, and Methanex is now asking about anticipated  
16 effects on the environment. This has nothing to do  
17 with the Miller reports.

18 PRESIDENT VEEDER: Ms. Callaway?

19 MS. CALLAWAY: I would like to ask  
20 Mr. Miller about December 12, 2002, the MTBE  
21 oxygenate report that states there was a take no

1 prisoners campaign against MTBE because I do think  
2 that it affects the amount of methanol that was  
3 refined into MTBE, and I would like to start with  
4 that question.

5 THE WITNESS: Which one are you talking  
6 about?

7 PRESIDENT VEEDER: Mr. Miller, one moment.  
8 There has been an objection to the question by  
9 counsel for the United States. So before the  
10 question is put to you, we have to sort out whether  
11 it is a permissible question.

12 MS. CALLAWAY: I provided several of the  
13 DeWitt reports, President Veeder, July 31, of  
14 2003--there were four from 2003--five from 2003,  
15 one from 2002, two from 2001 and two from 1999, and  
16 candidly most of them just talk about California  
17 officials meeting in Sacramento to lay the  
18 groundwork for an in-state ethanol industry,  
19 resurgence of ozone and pollution problems from  
20 ethanol.

21 But the December 12, 2002, report talks

1 about the industry being engaged in a  
2 take-no-prisoners campaign against MTBE, and the  
3 April 24, 2003, report talks about California  
4 officials meeting to lay the groundwork for an  
5 in-state ethanol industry. I think that a  
6 take-no-prisoners campaign against MTBE--

7 PRESIDENT VEEDER: Ms. Callaway, let's get  
8 back to the question you asked: Did you anticipate  
9 any environmental effects from the switch from MTBE  
10 to ethanol? That is the question you asked.

11 MS. CALLAWAY: Yes.

12 PRESIDENT VEEDER: Now, does that go to  
13 the witness's credit or the admissibility of his  
14 expert evidence?

15 MS. CALLAWAY: I think that it goes to the  
16 admissibility--it goes to the parameters used in  
17 extracting the expert evidence because, as an  
18 expert in this field and as somebody who is a  
19 leading authority on this, it is more than taking  
20 numbers and dividing them. It is looking at the  
21 issues that are going to affect whether MTBE was

1 used and whether ethanol was used.

2 PRESIDENT VEEDER: Just let me stop you  
3 because what you are saying, then, it is not a  
4 credibility question. It's going to his  
5 calculations principally in paragraph five of his  
6 witness statement; is that right?

7 MS. CALLAWAY: Yes. And we have no issue  
8 regarding--I will submit for the record, we don't  
9 have an issue regarding Mr. Miller's credibility.  
10 To the contrary, we think his credibility is beyond  
11 reproach. And I recognize that the United States  
12 has offered him as a witness, but we also recognize  
13 that his calculations stopped in 2001, and he just  
14 testified that after 2001, the drop in MTBE--the  
15 drop in methanol and MTBE corresponded with the  
16 increase in ethanol and the drop and the increase  
17 for both were quite dramatic.

18 PRESIDENT VEEDER: Please remember the  
19 paragraph five finishes in 2001.

20 THE WITNESS: Yes, it does, and I do think  
21 it goes to the credibility of the United States's

1 case, but not to Dr. Miller, that they stopped in  
2 2001, and that is not to cast any aspersion on  
3 Mr. Miller whatsoever.

4 PRESIDENT VEEDER: Thank you.

5 Do you want to come back to that, Mr.  
6 McNeill?

7 MR. MCNEILL: Yes, I do. I think this is  
8 a very easy decision for the Tribunal. I think if  
9 the parties' agreement and the Tribunal's order is  
10 going to have any meaning, then it should apply  
11 here, and Ms. Callaway should not be permitted to  
12 ask Mr. Miller questions about taking no prisoners  
13 campaign that allegedly happened at the end of  
14 2002. Mr. Miller's report, as you noted, his  
15 analysis ends at the end of December 2001.  
16 Ms. Callaway asked Mr. Miller what happened in  
17 2002. I permitted that question, but that does not  
18 stretch the scope of his expert report.

19 PRESIDENT VEEDER: Ms. Callaway, the  
20 question you asked, did you anticipate any  
21 environmental effects from the switch from MTBE to

1 ethanol we do not regard as arising from the  
2 witness statement or the questions put to this  
3 witness in chief?

4 MS. CALLAWAY: I will withdraw the  
5 question, President Veeder, and I will withdraw the  
6 question to the United States, as well.

7 As an expert witness, however, I do  
8 believe I am entitled to ask--

9 PRESIDENT VEEDER: I think you are not an  
10 expert witness. You're putting questions to him.

11 MS. CALLAWAY: I don't mean that  
12 I'm--please, I am sorry if it sounded that way. I  
13 don't think I am expert on much, certainly not in  
14 science, but I am permitted to ask this expert  
15 witness what materials he has reviewed in relation  
16 to this case; is that correct?

17 BY MS. CALLAWAY:

18 Q. Mr. Miller, are you familiar with any  
19 studies or expert reports done by a scientist known  
20 as Pamela Williams?

21 A. Yes, ma'am. I mean, yes, I am. She gave



1 speeches at several conferences and I've read her  
2 papers.

3 Q. And have you formed any opinions on your  
4 own regarding Dr. Williams's report on MTBE?

5 MR. MCNEILL: I am going to object again.  
6 Ms. Callaway said she was entitled to ask what  
7 materials we used in the preparation of Mr. Miller,  
8 and I thought that is where the question was going  
9 and now it is turned into an opinion on a  
10 completely unrelated expert report.

11 PRESIDENT VEEDER: Ms. Callaway, where is  
12 it going?

13 MS. CALLAWAY: I think that being  
14 proffered as a global gasoline and oxygenate  
15 expert, I would like to know his opinion. But if  
16 it is beyond the scope, then I withdraw that  
17 question as well.

18 PRESIDENT VEEDER: We are not trying to  
19 head you off. We are trying to understand the  
20 purpose of your questions.

21 MS. CALLAWAY: I understand, but I very

1 much appreciate that, and what I would like to do,  
2 however, is respect the May 28 agreement to stay  
3 within the scope and not to go afield. I do,  
4 however, believe that we are entitled to present  
5 hypotheticals to the expert witnesses that are  
6 within the scope of their expertise, whether it  
7 goes to their direct testimony or not.

8 PRESIDENT VEEDER: For what purpose?

9 MS. CALLAWAY: For the purpose of  
10 establishing both the credibility--

11 PRESIDENT VEEDER: I thought you said  
12 there was no issue as to credibility of his  
13 witness?

14 MS. CALLAWAY: That is the credibility of  
15 our witness. For purposes of establishing the  
16 credibility of our witness, Dr. Williams. And I do  
17 believe we are permitted to ask questions regarding  
18 the materials that they have considered and whether  
19 they found those materials to be credible.

20 PRESIDENT VEEDER: I think there are  
21 certain logical steps we haven't gone through. Do

1 we know whether Mr. Miller has considered any of  
2 Dr. Williams's material in this case?

3 MS. CALLAWAY: I will ask him. I didn't  
4 ask that question very well, and I will rephrase  
5 it.

6 PRESIDENT VEEDER: Why don't you just take  
7 it stage by stage and we will see where it is  
8 going.

9 Mr. McNeill, you reserve your position,  
10 and if need be, we will come back to you.

11 MR. MCNEILL: Thank you.

12 (Pause.)

13 BY MS.CALLAWAY:

14 Q. Dr. Miller, in formulating your opinions  
15 as an expert in the field of gasoline and  
16 oxygenates, do you formulate your analyses in a  
17 vacuum?

18 A. I would hope not.

19 Q. In fact, isn't it true that your analyses  
20 are based on your, as you say in your expert  
21 report, on your own personal knowledge as well as

1 your review of the data; is that correct?

2 A. That is correct.

3 Q. And part of your personal knowledge comes  
4 from your study of current major issues in fuel  
5 oxygenate industries; is that correct?

6 A. That is correct.

7 Q. And as part of your study of the fuel  
8 oxygenate industry, it is your business to be  
9 familiar with current major reports on the  
10 industry; is that correct?

11 A. Yes, indeed.

12 Q. And earlier I asked you about reports by a  
13 Dr. Pamela Williams concerning MTBE. Did you  
14 consider any of Dr. Pamela Williams's reports as an  
15 expert within the oxygenate and gasoline industry?

16 A. Well, I don't think that Dr. Williams's  
17 position has anything to do with what I was  
18 estimating here for the purposes of this particular  
19 study. But Dr. Williams is a very able advocate of  
20 one side of the situation, in which she maintains  
21 that MTBE is much less dangerous to the environment

1 than a lot of people would like to put it out to  
2 be, and she is very effective in that respect, but  
3 it is not the whole story.

4 Q. So, as a scientist, you look at both sides  
5 of the story; is that correct?

6 A. You have to, yes.

7 Q. And sometimes there is more than one side  
8 of the story; is that correct?

9 A. That is absolutely right.

10 Q. And as a scientist, it is your  
11 understanding that before you make a decision, you  
12 have to look at more than just one side of the  
13 story; is that correct?

14 A. That is usually wise, yes.

15 Q. It is wise not just as a scientist but in  
16 life; is that correct?

17 A. Always wise.

18 MS. CALLAWAY: Just one moment.

19 (Pause.)

20 BY MS. CALLAWAY:

21 Q. Without asking you the content--about the

1 content of any DeWitt reports, I would like to  
2 clarify that you made contributions regularly to  
3 the MTBE oxygenates and clean fuels reports?

4 A. Yes, I did.

5 Q. And did some of your contributions to  
6 those reports contain editorial opinions?

7 A. Yes, ma'am.

8 Q. And without asking you about those  
9 opinions, would you say that you were proud to have  
10 your name on those reports?

11 A. I was paid to have my name on those  
12 reports.

13 Q. And you were paid for your testimony in  
14 this case; is that correct?

15 A. Surely.

16 Q. And would you say you were equally proud  
17 of your MTBE oxygenate and clean fuels reports as  
18 you are of your testimony in this case?

19 A. I don't think you can compare the two. I  
20 mean I worked for 15 years at DeWitt studying MTBE  
21 upside down and backwards, and in this particular

1 case I was asked a very narrow question, which I  
2 answered.

3 Q. And in answering your narrow question, you  
4 were compensated; correct?

5 A. Yes, to a degree. Mildly.

6 Q. Well, I think there are some government  
7 lawyers that can talk to you about mild  
8 compensation at the table. But you were also  
9 compensated for a labor of love for 15 years at the  
10 MTBE Oxygenates and Clean Fuels Group that you were  
11 with at DeWitt; isn't that correct?

12 A. That is true.

13 Q. And that is where you took all sides of  
14 the MTBE debate into account, didn't you?

15 A. Tried to, yes.

16 MS. CALLAWAY: Thank you very much.

17 I should also add there is an associate  
18 from the private sector who has complaints about  
19 mild compensation, as well. Thank you very much,  
20 Dr. Miller, I have no further questions.

21 THE WITNESS: Okay.

1           PRESIDENT VEEDER: Mr. McNeill?

2           MR. MCNEILL: We have nothing.

3           PRESIDENT VEEDER: Mr. Miller, thank you  
4 very much. There are no more questions from the  
5 Tribunal.

6           THE WITNESS: Okay. I hope I have been  
7 able to answer your questions. And I concluded  
8 that one of the things I learned a long time ago is  
9 when the inevitable time comes and St. Peter looks  
10 at my records and stands before the Pearly Gates,  
11 he will say, you were an expert in what? Thank you  
12 very much for your time and I hope I have been  
13 helpful.

14          PRESIDENT VEEDER: Thank you very much.  
15 Bye-bye. It is a quarter to four. I am less  
16 concerned about the time than I was a moment ago.  
17 Do we have time for five-minutes and we will change  
18 over for Mr. Vind?

19          MR. LEGUM: What is next on the schedule,  
20 is it the argument or Mr. Vind?

21          PRESIDENT VEEDER: Mr. Vind.



1 MS. CALLAWAY: I will go get Mr. Dugan.

2 PRESIDENT VEEDER: If you would.

3 (Recess.)

4 PRESIDENT VEEDER: Let's resume.

5 RICHARD VIND, RESPONDENT/PARTY'S WITNESS, CALLED

6 PRESIDENT VEEDER: Good afternoon,

7 Mr. Vind. Before you give evidence, we shall  
8 invite you to make a declaration in the form of the  
9 text which is before you. If you are prepared to  
10 make that declaration, we invite you to do so now.

11 THE WITNESS: Yes, I am.

12 I solemnly declare upon my honor and  
13 conscience that I shall speak the truth, the whole  
14 truth, and nothing but the truth.

15 PRESIDENT VEEDER: Thank you. Mr. Legum.

16 DIRECT EXAMINATION

17 BY MR. LEGUM:

18 Q. Mr. Vind, you are now sitting in front of  
19 an overhead projector that is called an ELMO, and  
20 what I would like to do briefly is to have you  
21 indicate for the Tribunal where your former offices

1 were located on the map that is in front of you,  
2 and then we will establish where you were when you  
3 took the photographs that have been marked as X9  
4 through X10.

5 First, why don't we begin--if you could  
6 just mark at the bottom of that, I'm sorry. If you  
7 could mark that as X14.

8 PRESIDENT VEEDER: How about X13?

9 MR. LEGUM: It is X13, but he is going to  
10 mark that up.

11 PRESIDENT VEEDER: How about X13A?

12 BY MR. LEGUM:

13 Q. Before we get started, Mr. Vine, where did  
14 this document come from?

15 A. This came from my office building lease  
16 files. This was Exhibit A to the building lease  
17 that we had when we originally moved into this  
18 office building.

19 Q. Now, using the yellow Highlighter, can you  
20 highlight for us on X13A where your offices were,  
21 the building in which your offices were.

1           What you've just highlighted is actually  
2 where in the building your offices were located?

3       A.   My offices were located in that section of  
4 the building on the top floor. There were two  
5 floors to the building.

6       Q.   Very good. Andy, would you mind handing  
7 Mr. Vind X8.

8           Could you indicate on X13A, your position  
9 when you took the photograph that is on the top  
10 part of X8. Perhaps the best way to do that,  
11 unless the Tribunal has a better idea, would be for  
12 you to kind of have an arrow showing your point of  
13 view and where you shot the photograph.

14       A.   Certainly. For edification, I was  
15 standing across the street, in front of what is now  
16 the J.C. Penney's store, looking north at the  
17 office building on the right, which is here, and  
18 the Embassy Suites hotel, which is on the left  
19 there.

20       Q.   Can you do the same thing for the middle  
21 photograph on X8?

1       A.    Yes.  I was in the--standing in front of  
2 the hotel looking in this direction.

3       Q.    We are probably going to run out of space  
4 here pretty quickly, but could you indicate--were  
5 you basically in the same place when you shot the  
6 third photograph in X8?

7       A.    I walked about, looks like 50 feet closer,  
8 so I would have been approximately right here, in  
9 that area.

10      Q.    Turning to the next exhibit, that's X9, do  
11 you have that in front of you?

12      A.    I do.

13      Q.    Where were you when you took the  
14 photograph in the top left-hand corner?

15      A.    Approximately the same location as  
16 aforementioned on the other.  Across the street,  
17 but I took it at a slightly different angle to show  
18 the hotel entrance.

19      Q.    So your back was to the J.C. Penney's?

20      A.    Yes, correct.  I am looking north.

21      Q.    For the top right photograph, is that

1 essentially the same thing?

2       A.   No. That was from the hotel entrance  
3 looking at the entrance to the office building. My  
4 office is the window area directly above the salon.  
5 On the ground floor were retail shops, and a  
6 physical fitness, and my office was directly above  
7 the salon, directly--my office physically sat  
8 directly above the two closed doors which housed  
9 the trash area.

10       Q.   Okay. The next two shots on X9 are  
11 essentially the same thing that appears on the  
12 bottom photograph?

13       A.   The one is a repeat of the one on X8. The  
14 other one is simply a close-up view of the locked  
15 trash receptacle area.

16       Q.   Let's come back to that in a moment. Turn  
17 to X10.

18       A.   The only thing different than what you  
19 have already seen would be the bottom right-hand  
20 picture which shows the walkway leading  
21 from--actually, you can see where one of the

1 Embassy Suites Hotel cars is parked. And if you  
2 walk down that area, which would be right down  
3 here, I took it from approximately this location  
4 here, and you walk down, and there is the entrance  
5 to my office building.

6 Q. I see.

7 A. That is a fountain, decorative fountain in  
8 front of the office building. There is a courtyard  
9 directly down below.

10 Q. Can you point to the courtyard on the map  
11 so we can see where that is?

12 A. Courtyard would be here. And beneath that  
13 then is the access to the underground parking.  
14 There is no aboveground parking for the office  
15 building or for the hotel, only temporary parking  
16 for people to check into the hotel, and also there  
17 are two handicapped spaces.

18 Q. Returning to X13A, we have been focusing  
19 primarily on a couple of areas here, the area where  
20 you were in front of J. C. Penney's which is marked  
21 as Robinson's on this, and then the area in between

1 your building and the Embassy Suites Hotel. Can  
2 you describe for us what is on the other side of  
3 your building?

4 A. You are talking to the east, this area  
5 here?

6 Q. Yes.

7 A. That is the main entrance to the Brea mall  
8 coming from Birch Street, which is the north  
9 entrance to the mall. Ingress flows this way.  
10 There is a stop light. Ingress goes this way,  
11 around this way over to the Nordstrom's parking  
12 area, which is here, or turning to the left, around  
13 to the covered parking structure for the rest of  
14 the mall, which is here. It is a two-story covered  
15 parking structure.

16 Q. Do you see where the words "Embassy Court"  
17 are on that map?

18 A. I do.

19 Q. What is that area?

20 A. That is the retail, combined retail and  
21 office building--the two-story office building.

1       Q.   I'm sorry, I wasn't clear. I am not  
2 referring to your building but rather just where  
3 the words are?

4       A.   That is a greenbelt area. This entire  
5 section here is all greenbelt.

6       Q.   And for someone like myself who is not  
7 well versed in what greenbelt means, could you--

8       A.   Landscaped.

9       Q.   Thank you very much.

10      A.   You're welcome.

11      Q.   Now, on the other side of the building is  
12 Birch Street; is that correct?

13      A.   That is correct.

14      Q.   What is across Birch Street?

15      A.   Across Birch Street is another retail  
16 shopping center, more of a strip center than a  
17 major shopping mall.

18      Q.   Now, is there a parking lot that is  
19 adjacent to your offices, directly adjacent to your  
20 offices?

21      A.   No, there is not. Two-story underground



1 parking.

2 Q. Is there a dumpster that is adjacent to  
3 your offices?

4 A. No, there is not.

5 Q. You mentioned earlier that the trash is  
6 kept inside the building.

7 A. It is inside the building behind those  
8 doors, steel doors?

9 Q. How do people access that?

10 A. To access--what do you mean by "people"?  
11 I'm not sure I understand.

12 Q. How do the people that putting the garbage  
13 in and taking the garbage out access it?

14 A. They would come to my office and the other  
15 offices, take the trash from the trash receptacles  
16 in the offices themselves, put them in plastic  
17 bags, tie the bags up, and then deposit them inside  
18 that closed trash area underneath my office, which,  
19 by the way, I want to clarify, is part of the  
20 common area for those tenants in the office  
21 building, and I pay the common area charge every

1 month for the privilege of having that there,  
2 because you must understand, the Embassy Suites  
3 Hotel is a very fine hotel, and there is no way  
4 that they were going to allow us to have trash out  
5 in the open. So, therefore, the builder who built  
6 the hotel is the same builder that built the office  
7 building, and he designed in this private trash  
8 area so it would not be a nuisance, or it would not  
9 be available to the public.

10 MR. LEGUM: Thank you, Mr. Vind. I don't  
11 have any questions for you that require your being  
12 in that seating vantage point. But before you get  
13 up, let me just ask whether the Tribunal has any  
14 questions.

15 PRESIDENT VEEDER: Just one moment.

16 Mr. Vind, If you could look at the  
17 photograph on X9, which is the photograph of the  
18 top right-hand side of the page, and we see the  
19 word "Salon," and as you describe it, your office  
20 was the window above salon to the right immediately  
21 above the doors.

1           THE WITNESS: Well, that is actually the  
2 storage area where the files were kept. The one to  
3 the right is my actual physical office space. You  
4 had to go through my office or through the rest  
5 room in order to get to the files.

6           PRESIDENT VEEDER: Let's leave the files  
7 aside for the moment. But if we then go down to  
8 the white lines that we see marked on the roadway  
9 in that photograph, are those parking places?

10          THE WITNESS: No. They are  
11 specifically--maybe it is not readily visible, but  
12 it says "No Parking." It was designed to have no  
13 parking in that area because that is directly  
14 across, maybe 30 or 40 feet from the entrance to  
15 the hotel.

16          PRESIDENT VEEDER: What was the temporary  
17 parking you described in your evidence?

18          THE WITNESS: If you were to look at  
19 the--unfortunately you can't see it, but if you  
20 were to look past those shrubs in the upper  
21 left-hand picture, directly past that would be, on

1 your left, is the entrance to the hotel. And I  
2 want to also point out that the way we are looking  
3 on X9, going north, is a one-way. You cannot come  
4 into the hotel entrance going southbound. You must  
5 wrap around, either going this way and coming  
6 through that way or you can go into the underground  
7 parking structure, wrapping around this way and  
8 then enter the hotel complex, go up to the main  
9 lobby area of the hotel and walk across the street  
10 or what is technically I guess an alleyway, or a  
11 foyer, I don't know how to describe it exactly, but  
12 you can see in this picture, on X9, that the  
13 parking would be diagonal parking, either five or  
14 six parking spaces, on the far end of the building,  
15 right here, two handicapped and three or four  
16 temporary, either 20 minute or one hour, something  
17 like that, for guests to check into the hotel.

18 PRESIDENT VEEDER: Would you like the  
19 witness to remain where he is if you are going to  
20 ask questions about this?

21 MR. DUGAN: No.

1           MR. LEGUM:  Actually, may I make one  
2 request.

3           BY MR. LEGUM:

4       Q.    Since you have referred to north on the  
5 map, north and south, can you indicate which  
6 direction is north and south?

7       A.    Actually it is on here but it is not  
8 necessary easy to see.  North is this way.

9           MR. LEGUM:  Thank you.  We will try to  
10 make color copies, if it is possible.

11           I won't be very long with this part of the  
12 examination.

13           BY MR. LEGUM:

14       Q.    Mr. Vind, do you have the witness  
15 statement you gave in this case.

16       A.    Yes, I do.

17       Q.    Now, turning to page 2 and page 3 of that  
18 witness statement, you address two topics:  One is  
19 the August 4, 1998 dinner, and the other is Regent  
20 documents submitted by Methanex.  Could you briefly  
21 summarize for the Tribunal your testimony on the

1 August 4, 1998 dinner.

2 A. Well, I reread this this morning, and it  
3 states exactly what happened and what I did. I can  
4 go into it in more detail, but this is a very, I  
5 think, very well thought-out recitation of what in  
6 fact took place. There is nothing more, nothing  
7 less than that. Would you like me to expand on  
8 that?

9 Q. No. I am sure Mr. Dugan will have some  
10 specific questions for you, but I think that's  
11 probably good enough for the time being.

12 A. And the same is true for the second part  
13 of that, the Regent documents, but I would like to  
14 make a couple minor clarifications, if I could.

15 Q. Please.

16 A. In paragraph 1, I state that I have no  
17 present or past relationship with anyone, and it  
18 turns out that in 1996, my company did apply to  
19 become a customer of Methanex, to purchase  
20 methanol. I don't believe we ever did, but we did  
21 receive price sheets on methanol from Methanex,

1    which in reviewing my files, I found some, so I  
2    want to clarify that.

3               The last item is on item 15 on the last  
4    page. I myself did not contact the FBI, it was my  
5    lawyer, Richard Crane, who is a former federal  
6    prosecutor, who in fact contacted the FBI at my  
7    request. Other than that, I stand on the record  
8    here.

9       Q.    So, with those two corrections, this  
10   witness statement is true, to the best of your  
11   knowledge today?

12       A.    Absolutely.

13               MR. LEGUM: No further questions.

14               PRESIDENT VEEDER: Thank you.

15               Mr. Dugan?

16                       CROSS-EXAMINATION

17               BY MR. DUGAN:

18       Q.    Good afternoon, Mr. Vind. We met just  
19   briefly. My name is Christopher Dugan. I am here  
20   on behalf of Methanex Corporation, and I will be  
21   asking you some cross-examination questions,

1 questions about your witness statement, primarily.  
2 Now, you just mentioned a clarification that you  
3 put in the record. You said that in paragraph 15  
4 you were actually not the one who reported the  
5 break-in and the illegal copying of documents; is  
6 that correct?

7 A. I specified that I did not myself  
8 personally do it, but Richard Crane, my lawyer that  
9 I hired to represent me on this matter, did.

10 Q. Right. But when you signed this witness  
11 statement, you said that you had reported it?

12 A. Through my lawyer, yes, I did.

13 Q. That is not what it says. It says I  
14 reported it.

15 A. I just corrected the record, didn't I?

16 Q. You did just correct the record, but what  
17 I'm asking you is at the time you signed this  
18 witness statement did you know that you hadn't  
19 reported it?

20 A. In my mind, I'd reported it through my  
21 attorney. Is that sufficient?



1       Q.    That is not what it says, is it?  It says,  
2  I reported the break-in to the FBI.  I take it that  
3  is not correct.

4       A.    That is not correct.

5       Q.    Thank you.  Now, did you meet with  
6  officials from the State Department with respect to  
7  the preparation of your witness statement?

8       A.    I did not meet with them.  I talked with  
9  one official over the telephone.

10      Q.    Who is that?

11      A.    Andrea Menaker.

12      Q.    What did you talk about?

13      A.    She asked me for a description of what  
14  took place, and I described it to her, and she  
15  prepared a draft for me to review and revise, which  
16  I did.  I sent it back to her to prepare the final,  
17  finished form.  I don't have a secretary, and I am  
18  basically semi-retired, and I do not have really  
19  good access to that type of help, so she offered to  
20  do that for me, and I took her up on it.

21      Q.    Did you talk about the case, this

1 arbitration?

2 A. To who?

3 Q. With Ms. Menaker.

4 A. Of course, I did.

5 Q. What did you say about the case to  
6 Ms. Menaker?

7 A. Well, I have four pages of a witness  
8 statement that I said about this case.

9 Q. Did you say anything else about the case  
10 to her?

11 A. Yes, I have.

12 Q. What did you say to her?

13 A. I have expanded upon that in a subsequent  
14 meeting that she came out to Los Angeles, about two  
15 or three weeks ago, when she wanted clarification,  
16 and she went over the format of the Tribunal, and  
17 what the Tribunal meant, and the participants, the  
18 President and the members, and what to expect.  
19 This is my first approach to anything like this  
20 other than the courtroom or before the Congress.  
21 So I have not really had any significant, you know,

1 instruction on how to deal with a Tribunal. I  
2 don't know what the rules are. So, that is what we  
3 talked about at great length.

4 Q. Did Ms. Menaker say anything about the  
5 case to you other than what is in your witness  
6 statement?

7 A. She gave no additional information about  
8 anything that other witnesses have said or  
9 testified to. They have been very scrupulous in  
10 making sure that there have been no breaches of any  
11 confidence or I guess lawyer-client, or whatever  
12 you would call it. So I want to be very careful.

13 Q. Have you talked with Gray Davis about your  
14 testimony?

15 A. I have not.

16 Q. Have you talked with representatives of  
17 Gray Davis about your testimony?

18 A. No, I have not.

19 Q. You haven't talked with Gray Davis in any  
20 indirect fashion?

21 A. What does that mean?

1       Q.   Well, have you talked to someone who you  
2   knew would talk to him?

3       A.   I have not.   About this case?

4       Q.   Yes.

5       A.   I have not.

6       Q.   Let's go to the dinner, if we could.

7   Did you fly out with Mr. Davis to Chicago?

8       A.   No, I did not.

9       Q.   You meet him in Chicago?

10      A.   Yes, he met me in Chicago.

11      Q.   And then you flew from Chicago down to

12   Decatur; is that right?

13      A.   We flew from Makes Field, Chicago, to

14   Decatur airport, that's correct.

15      Q.   Who was on the plane?

16      A.   I believe that it is listed on my witness

17   statement.  On the airplane, as I recall, was a Dan

18   Weinstein, myself, the Lieutenant Governor Davis,

19   there was one or two--I think there were two

20   California Highway Patrolmen who were serving as

21   both driver and bodyguard for the Lieutenant

1 Governor and then, of course, the two pilots.

2 Q. How well do you know Governor Davis?

3 A. I have known ex-Governor Davis since  
4 approximately 1981. Casually only.

5 Q. Do you talk to him often?

6 A. I do not.

7 Q. Does he call you often?

8 A. Absolutely not.

9 Q. Does his office ever call you?

10 A. No.

11 Q. Never?

12 A. Does his office ever call me? That is in  
13 the present tense, isn't it, Mr. Dugan?

14 Q. Has his office ever called you?

15 A. His office has called me in response to  
16 the requests for them to return my phone calls.

17 Q. Has his office ever called you for  
18 anything else?

19 A. No.

20 Q. When you called him, what were you calling  
21 about?

1       A.    I have never called Gray Davis after he  
2 was elected to Governor.

3       Q.    When you called him before that, why did  
4 you call him?

5       A.    I might have called him, but usually he  
6 was not available, and I would have to go through  
7 one of his staff members.

8       Q.    And why were you calling him?

9       A.    Because I was arranging the meeting in  
10 Decatur at his request.

11      Q.    Did you ever talk to Davis or his staff  
12 members about political contributions?

13      A.    Of course I did.

14      Q.    Why did you say "of course"?

15      A.    Because he requested that I raise money  
16 for him.

17      Q.    Was that usually the subject of your  
18 conversations with Davis and his staff, money?

19      A.    With Gray Davis that was almost always the  
20 subject of conversations.

21      Q.    Why is that?

1       A.    Because the man was a very prolific  
2 fundraiser.

3       Q.    Now, your business is ethanol; is that  
4 correct?

5       A.    That is correct.

6       Q.    Business is pretty good right now, isn't  
7 it?

8       A.    I don't know what you mean by "pretty  
9 good."

10      Q.    Is it more profitable now than it as a  
11 couple years ago?

12      A.    No, it is not.

13      Q.    Is it more profitable now than it was five  
14 years ago?

15      A.    No, it is not.

16      Q.    Is the price of ethanol up?

17      A.    Up from what?

18      Q.    Up over the last two years.

19      A.    You know, I don't really know the price of  
20 ethanol today because I have been retired since  
21 last September. My son is running the business.

1 Q. And you have no idea what the price of  
2 ethanol is?

3 A. I would guess that ethanol is someplace  
4 above \$1.50.

5 Q. You have no knowledge today--

6 A. I do not have any direct knowledge of what  
7 the price of ethanol is today. I explained to you  
8 I have been retired since September. I have not  
9 gone into the office since September. I do not  
10 sign checks. I am not involved in the day-to-day  
11 operation in any way.

12 Q. Do you read the newspaper?

13 A. Of course I read the newspaper.

14 Q. Never noticed any newspaper articles about  
15 the price of ethanol?

16 A. No, I have not.

17 Q. How many years did you spend in the  
18 ethanol business?

19 A. I spent 23 years in the ethanol business.

20 Q. You haven't read any news articles about  
21 ethanol since you retired?



1       A.    I don't get any trade publications, I  
2 don't read them. Frank, I am sick and tired of the  
3 business. I worked for 48 years, and I decided now  
4 is the time to hang it up, and you know what, I  
5 like to go fishing and play golf and dabble in some  
6 real estate, and that is all I am doing.

7           MR. LEGUM: I would like to ask Mr. Vind  
8 to wait for the question to finish before you begin  
9 your answer so that the court reporter can take  
10 down everything that's said.

11           BY MR. DUGAN:

12       Q.    So, just to go back, you haven't read  
13 newspaper stories in regular publications, not  
14 trade publications involving the price of ethanol?

15       A.    I don't recall. Since when? You have to  
16 clarify that for me.

17       Q.    Since you retired.

18       A.    No, I have not.

19       Q.    Now, going back to the dinner in Decatur,  
20 you landed in Decatur and then you drove to the  
21 country club; is that correct?

1       A.    I did not drive to the country club.

2       Q.    You were driven to the country club?

3       A.    That is correct.

4       Q.    Who was in the car with you?

5       A.    I don't remember.  There were two vans.

6       There were the ADM security people.  There were

7       drivers, the contingent that was on the airplane.

8       So there were probably--I don't remember who was in

9       the car.  I think Lieutenant Governor Davis was

10      with me driving to the country club, but I can't

11      say for sure.

12      Q.    And you sat next to Governor Davis on the

13      flight down from Chicago; correct?

14      A.    No, I did not.

15      Q.    You did not.  You are certain of that?

16      A.    If you mean sitting next to me and sitting

17      next to him, I did not sit next to Governor Davis

18      on the plane trip going to Decatur.  That's a true

19      statement.

20      Q.    I am just asking if you are certain of

21      that.

1       A.    I am absolutely certain.

2       Q.    And you believe that you did sit next to  
3 him in the car on the drive from--

4       A.    That is possible.

5       Q.    What happened when you got to the country  
6 club?

7       A.    We shook hands with the ADM personnel. We  
8 went into a dining room. We had dinner. That  
9 is it.

10      Q.    Did you have cocktails first?

11      A.    I don't remember. I don't recall. I  
12 don't know if they were served outside the room. I  
13 think wine was served. I don't recall that.

14      Q.    The normal practice would be to have  
15 cocktails, wouldn't it?

16      A.    Yes. Normal practice would be.

17      Q.    How many people total do you recall at the  
18 dinner?

19      A.    Six or seven.

20      Q.    Now, you don't recall whether there were  
21 cocktails so I take that means you don't recall

1 whether you went in and sat down immediately or  
2 whether you stood around and had cocktails; is that  
3 right?

4 A. It was late in the evening, and I don't  
5 believe the country club itself was still open  
6 necessarily or not well attended at that time of  
7 night. I would say that we went directly from the  
8 meet-and-greet into the dining area and probably  
9 either had cocktails, or I do recall wine being  
10 served.

11 Q. And did you stand around and drink the  
12 wine before you sat down? Do you recall?

13 A. I don't remember.

14 Q. And the table had about seven or eight  
15 people; is that right?

16 A. That is correct.

17 Q. And who were you sitting next to?

18 A. I believe I was sitting next to Gray  
19 Davis.

20 Q. Who was on your other side, do you recall?

21 A. No, I don't remember.

1       Q.    Was there just one dinner conversation or  
2 did it break up into smaller conversations?

3       A.    It was primarily dominated by Gray Davis,  
4 and I would suspect that the other part of the  
5 conversations were generally either, as I recall,  
6 Alan Andreas and Marty Andreas. They were having  
7 most of the conversation during the dinner.

8       Q.    Different people talked to different  
9 people at different times?

10      A.    Not a lot. Because it was so late in the  
11 day, everybody was very anxious to get on with  
12 things. It is important to recognize that Gray  
13 Davis was extremely late getting to the airport,  
14 and the weather had deteriorated, and there was  
15 some question as to whether we were even going to  
16 fly there or not. So the chairman at the time,  
17 Dwayne Andrea, did not even attend the dinner  
18 because it was so late in the evening.

19      Q.    Did you talk to Mr. Davis about ethanol?

20      A.    Yes, I did.

21      Q.    What did you say to him?

1       A.    I said ethanol is a very good fuel, it is  
2   a good renewable product, and we talked about that.

3       Q.    Did you talk about expanding the use of  
4   ethanol in California?

5       A.    Oh, yes.

6       Q.    Did you talk about how he could expand the  
7   use of ethanol in California?

8       A.    Yes.  I said one of the ways you can do  
9   that is to encourage the construction of  
10  manufacturing facilities in the state of  
11  California.  For the benefit of the members and  
12  Mr. President, there was only one small ethanol  
13  manufacturing plant in the state of California.  I  
14  believe there are only two today.  Almost  
15  everything that comes into California comes in  
16  either through ship, through the Panama Canal, or  
17  it comes by rail.

18      Q.    Were you aware at the time that there was  
19  controversy about the use of MTBE in gasoline in  
20  1998?

21      A.    Yes, I was.

1       Q.    Were you aware of the fact that it had  
2   been proposed by many people that MTBE be banned?

3       A.    That is correct.

4       Q.    And were you aware that if MTBE were  
5   banned, it was entirely possible that ethanol would  
6   substitute for MTBE?

7       A.    That was my hope.

8       Q.    Did you talk about MTBE with Governor  
9   Davis?

10      A.    No, not with Governor Davis.  With  
11   Lieutenant Governor Davis, I did.  That is correct.

12      Q.    At that time?

13      A.    At the time, yes.

14      Q.    And what did you talk to him about?

15      A.    I reinforced with Lieutenant Governor  
16   Davis that ethanol was renewable, that it was clean  
17   burning, that it did not pollute the groundwater,  
18   whereas MTBE had been determined to be a serious  
19   problem in the state of California, having had the  
20   City of Santa Monica lose I think two or three  
21   wells representing a significant portion of their

1 water supply, and having Lake Tahoe, South Lake  
2 Tahoe be contaminated, and various things that took  
3 place throughout the state. It was starting to  
4 become a huge, huge issue in the state of  
5 California, such that the Legislature passed a law  
6 which was signed by Gray Davis's predecessor, Pete  
7 Wilson, which mandated that the effects of MTBE be  
8 studied--

9 Q. Is this what you told Governor Davis? I  
10 mean, you are not here to give speeches?

11 A. I will give a little speech here, because  
12 I think it is important to clarify this.

13 Q. I just asked you a simple question. Did  
14 you tell him about MTBE?

15 A. Yes, I did.

16 Q. Now, did you tell him that MTBE--

17 MR. LEGUM: Excuse me, just if I can  
18 interrupt for one second. Just for the sake of the  
19 clarity of the record, I think it would be useful  
20 if we could clarify whether the discussion with  
21 Mr. Davis that you have been asking about is one



1 that took place at the dinner or whether it took  
2 place at some other time because I believe that has  
3 become muddled.

4 MR. DUGAN: I believe he already said it  
5 took place at the dinner.

6 PRESIDENT VEEDER: Mr. Legum, you can come  
7 back to this on redirect. We have noted the point.  
8 And we'll see.

9 BY MR. DUGAN:

10 Q. How would the ethanol industry go about  
11 expanding the use of ethanol in California?

12 A. Number of ways. The price of gasoline  
13 were to reach a certain level, then it becomes  
14 economically viable to transport it from the  
15 Midwest because the major market for ethanol at  
16 that time was in the Midwest, where some cities and  
17 in fact some states, such as the City of Denver,  
18 the City of Phoenix, some other cities closer to  
19 the area of production had mandated the use of 3.5  
20 percent oxygen by weight, which in fact is ethanol.  
21 MTBE cannot be blended legally at that level, only

1 ethanol could. So there were a lot of precedents  
2 for ethanol taking a big market share outside of  
3 California.

4 Q. And if Governor Davis banned MTBE, that  
5 would expand the use of ethanol, wouldn't it?

6 A. That is true.

7 Q. Did you talk to Governor Davis about that  
8 at the meeting?

9 A. I did not.

10 Q. Did you ever talk to him about that?

11 A. I only talked to him after the fact, after  
12 he was elected Governor, when, at a birthday party  
13 held in his honor, he came over to me and asked  
14 that I intercede with the oil companies and the  
15 ethanol producers to try to see if some  
16 accommodation could not be reached so that there  
17 would not be shortages of gasoline supply in the  
18 state of California, which was his fear.

19 Q. And what did you do? Did you act upon  
20 that request?

21 A. I, in fact, did. I went to the Secretary

1 of CalEPA, I contacted at least one Chairman of one  
2 major oil company, and I contacted people at ADM  
3 and some other suppliers of ethanol to try to see  
4 if I couldn't negotiate some type of a compromise  
5 that would allow for perhaps some type of a  
6 shifting--where the refiners could, in fact, comply  
7 with Federal law. Federal law requires the  
8 addition of oxygen to gasoline in non-attainment  
9 areas. So the refiners in California were  
10 concerned about was not so much the use of ethanol,  
11 but whether they had to be refinery-specific or  
12 whether it had to be throughout the entire state.  
13 So, that was the thrust of my conversations and my  
14 meetings.

15 Q. Were they concerned that there was an  
16 insufficient supply of ethanol at that time?

17 A. Initially that was the concern of the  
18 refiners, that was the concern of the  
19 administration, from Secretary Hicox, and certain  
20 members of his agency. Those all proved to be  
21 groundless fears.

1       Q.   And as part, because they were concerned  
2   about the short supply of methanol, they asked you  
3   to see if you could work out some type of  
4   arrangement that would accommodate that and  
5   accommodate the refiners' concerns, and still  
6   involve an expansion of the use of ethanol; is that  
7   correct?

8       A.   I can't hear you well.  I don't know if  
9   you are saying methanol or ethanol.

10      Q.   Ethanol.

11      A.   You're saying ethanol.

12      Q.   Ethanol, correct?

13      A.   Now I lost my train of thought.  Can you  
14   go over that one more time.

15      Q.   What you're saying is that the Governor  
16   contacted you and asked you if you could mediate  
17   some type of compromise that in taking into account  
18   the possible short supply of ethanol, you would  
19   accommodate the refiners' concerns and yet still  
20   adopt or still allow a significant amount of  
21   ethanol to be introduced into the market, a

1    compromise between both sets of interests?

2            A.    That is generally what he asked me to do.

3    This was a very brief conversation held.  Maybe it  
4    took two minutes as the birthday party was breaking  
5    up.  That was the, as I recall, probably the only  
6    time I had met with--meeting is too strong a word.  
7    The only time I had talked to Governor Davis--and I  
8    believe that is the only time I've talked to him  
9    since he was elected Governor.

10          Q.    Was that before the ban implemented--was  
11    that before the ban was announced?

12          A.    No.  That would have been after the ban  
13    was announced.

14          Q.    You're sure about that?

15          A.    I am absolutely certain because it was a  
16    birthday party honoring Governor Davis, so it had  
17    to be after the ban was announced, because if I  
18    remember, the ban was announced in January or  
19    February or something like that of 1999.  Am I  
20    correct?

21          Q.    When is the Governor's birthday?

1       A.    I don't remember when it is.  I just  
2 remember the event.

3       Q.    How do you know it was before, that the  
4 event was where the ban?

5       A.    Well, as I mentioned, he was Governor  
6 Davis at the time, and it was sometime  
7 substantially after he had been elected.  That is  
8 all I can remember.  I don't know when his--I can't  
9 remember the time.

10      Q.    You can't remember the time?

11      A.    No.

12      Q.    All right.  Now, one final question about  
13 dinner--going back to the dinner in Decatur, you  
14 don't remember all the conversations everybody had  
15 there, do you?

16      A.    Well, I remember the conversations  
17 generally that took place at the dinner table which  
18 was the vast bulk of the time that was spent.

19      Q.    You remember all of the conversations that  
20 took place at the dinner table?

21      A.    Absolutely not.

1 Q. Were you party to all of the conversations  
2 that took place that evening?

3 A. I don't know. I don't know. I am not  
4 party to--if somebody got up and went to the men's  
5 room. If they talked to somebody, I have no idea.

6 Q. Can you say here positively that you were  
7 party to all of the conversations that took place  
8 that night?

9 A. No, I cannot.

10 Q. Let's go, if we could, to your witness  
11 statement, please.

12 Now, in paragraph four, you say that you  
13 participated with ADM in encouraging the use of  
14 ethanol through lobbying and educating government  
15 officials as to the benefits of ethanol; correct?

16 A. Are you asking me if--if that is what is  
17 on the piece of paper?

18 Q. Let me ask you, is that true?

19 A. That is true.

20 Q. And on the next page, a continuation of  
21 paragraph four, you state that--line two, we

1 jointly and independently supported various  
2 legislators and members of Congress who we felt  
3 might support the expanded use of ethanol; is that  
4 correct?

5 A. That is correct.

6 Q. You were looking for legislators who would  
7 support the expanded use of ethanol?

8 A. That is correct.

9 Q. And it was to those legislators that you  
10 directed your contributions; correct?

11 A. That's correct.

12 Q. And if they didn't support expanded use of  
13 ethanol, you wouldn't give them any money?

14 A. That is not necessarily true at all. I  
15 met with a variety of legislators, some of whom did  
16 not embrace the expanded use of ethanol, but I  
17 tried to convince them that ethanol was a good  
18 renewable product. So that was the whole thrust of  
19 my conversations and arguments.

20 PRESIDENT VEEDER: The question was  
21 whether you would still give them money, not



1 whether you'd meet them.

2 THE WITNESS: I would raise money for  
3 legislators in California and at the federal level  
4 who supported the use of ethanol as a renewable  
5 fuel and the expanded use of ethanol and the  
6 expanded production of ethanol, that is correct.

7 BY MR. DUGAN:

8 Q. Now, if you had a legislator, either at  
9 the state level or the federal level, and you gave  
10 them money but they refused to support the expanded  
11 use of ethanol, would you continue to raise money  
12 for them?

13 A. Probably not.

14 Q. You are familiar with Senator Torricelli,  
15 aren't you?

16 A. What does that mean? Am I familiar?

17 Q. Do you know him?

18 A. Do I know former--

19 PRESIDENT VEEDER: Do you want to rephrase  
20 that question?

21 BY MR. DUGAN:

1 Q. Do you know former Senator Torricelli?

2 A. Yes, I do.

3 Q. Now, I would like to call the Tribunal's  
4 attention to 11 JS Tab 231, which is a news article  
5 concerning former Senator Torricelli and Mr. Vind.

6 MR. LEGUM: Do you have copies for us or  
7 should we look for it in the volumes?

8 MR. DUGAN: I have copies.

9 BY MR. DUGAN:

10 Q. Before we look at the article, how did you  
11 meet Senator or then-Representative Torricelli, do  
12 you recall?

13 A. Yes, I recall.

14 Q. How was that, could you describe that for  
15 us?

16 A. Yes. I met him at the U.S. Embassy at San  
17 Salvador, El Salvador.

18 Q. Then you contributed \$500 to his campaign  
19 March 1, 1996; is that correct?

20 A. I can't confirm that. That is what the  
21 article says, but I don't know.

1 Q. You don't know because you don't recall--

2 A. I don't recall.

3 Q. But you did make contributions to  
4 then-Representative Torricelli; is that correct?

5 A. That is correct.

6 Q. Did you at that time ask Mr. Torricelli to  
7 intervene on your behalf and write a letter to U.S.  
8 Trade Representative Mickey Cantor?

9 A. What do you mean by "at that time"?

10 Q. After you gave the contribution?

11 A. I don't recall if it was before or after.

12 Q. So, you don't recall that you gave him a  
13 contribution on March 1, 1996?

14 A. I don't know the date.

15 Q. And you don't recall that on March 13 he  
16 did, in fact, write a letter for you?

17 A. You are asking me to remember dates that  
18 are, what, eight years ago, and if that is what the  
19 article says, I assume that that was reasonably  
20 accurate.

21 Q. Well, do you recall from your own

1 recollection that there was a fairly prompt  
2 response and a fairly favorable response from  
3 Representative Torricelli to your contribution of  
4 \$500?

5 A. It was a favorable response, but I am not  
6 saying it was in response to my contribution. It  
7 was a favorable response in response to my request  
8 for assistance in trying to get the Government of  
9 El Salvador to stop expropriating my assets in that  
10 country.

11 Q. Do you recall that two weeks after  
12 Senator--then-Representative Torricelli sent the  
13 letter you made another contribution of \$500?

14 A. I don't recall.

15 Q. Do you recall that throughout that year of  
16 1996, you and your family gave thousands of dollars  
17 to Senator Torricelli and to the Senate Democratic  
18 Committee?

19 A. What time period are you talking about?

20 Q. 1996, when Senator Torricelli was running  
21 for the Senate--when then-Representative Torricelli

1 was running for the Senate?

2 A. That is entirely possible, yes, sir.

3 Q. But you don't remember it?

4 A. I gave many dollars to many politicians  
5 legally as campaign contributions. When asked if  
6 they were people I knew or people that were  
7 supportive of my request to expand the use of  
8 ethanol or to assist in my foreign problems, yes, I  
9 did.

10 Q. But you gave so many contributions to so  
11 many legislators you just don't remember the  
12 details; is that correct?

13 A. That is correct.

14 Q. And it says in this article that you gave  
15 184,800 between 1984 and 1996, you and your family.  
16 Do you have any reason to doubt the accuracy of  
17 that statement?

18 MR. LEGUM: Is there a page reference?

19 MR. DUGAN: It's on page 1329. Bates  
20 stamps 1329.

21 THE WITNESS: That appears--I am not going

1 to deny that that is an accurate figure.

2 BY MR. DUGAN:

3 Q. Do you recall asking Archer Daniels  
4 Midland to also send some money, campaign  
5 contributions to Representative Torricelli?

6 A. Yes, I do recall that.

7 Q. And did they?

8 A. I don't remember.

9 Q. If you turn to 001330, it talks about your  
10 letter, it says, (reading) Weeks later ADM made a  
11 \$5,000 contribution to Torricelli from its  
12 Political Action Committee. Does that refresh your  
13 recollection in any way as to a campaign  
14 contribution made by ADM to Representative  
15 Torricelli after you asked them to?

16 A. Well, it says here that it was the PAC  
17 that gave the \$5,000, that's a Political Action  
18 Committee. It's not ADM. Corporations were  
19 prohibited from giving money to Federal political  
20 candidates that I recall.

21 Q. It says ADM made a 5,000 contribution, but

1 I think technically you are right. Let's put it in  
2 those terms. Does this refresh your recollection  
3 about the ADM PAC contribution of 5,000 to  
4 Mr. Torricelli?

5 A. No, it does not.

6 Q. Do you have any reason to believe that  
7 this accounting of how the events played out is  
8 inaccurate?

9 A. Do I believe it is inaccurate? No, I do  
10 not believe it is inaccurate.

11 Q. Now, after Representative Torricelli wrote  
12 the letter to United States Trade Representative  
13 Mickey Cantor, did he then take up your personal  
14 issue with the Government of El Salvador?

15 A. I don't recall if he got directly involved  
16 with the Government of El Salvador or went strictly  
17 through the U.S. Trade Representative, Mickey  
18 Cantor. I know that he did contact the U.S. Trade  
19 Representative on my behalf, at my request.

20 Q. Do you know whether Mr. Cantor intervened  
21 on your behalf with the Government of El Salvador?

1       A.   No, I don't believe that Mr. Cantor  
2 himself did. I think he bucked it down to one of  
3 his staff members who then wrote a letter. Maybe  
4 Mr. Cantor did. I know that they wrote a letter  
5 to--either to the Embassy, to the Ambassador to the  
6 United States wrote a letter directly to the  
7 President of El Salvador, I don't recall which.

8       Q.   But the United States Government did do  
9 something on your behalf in El Salvador?

10      A.   It didn't work.

11      Q.   That is not what I asked you. They did do  
12 something on your behalf; is that right?

13      A.   Yes, they did.

14      Q.   Did you interest other legislators in the  
15 problem you had prior to the time you dealt with  
16 Mr. Torricelli?

17      A.   I met with my local Congressman at the  
18 time, who I had known for some time, but he was a  
19 member of the minority party at the time and didn't  
20 offer me much hope that he would be able to do  
21 anything.



1       Q.   Now why did you as a citizen of California  
2   turn to Representative from New Jersey?

3       A.   Well, no one knew the situation in El  
4   Salvador better than Mr. Torricelli because he had  
5   been there, and we had talked about the problems in  
6   El Salvador. He was my logical go-to guy because  
7   as I recall he was either at the time a member of  
8   the House or Senate, either Foreign Relations  
9   Committee or some committee that had some purview  
10  over Central America.

11      Q.   Let's go back to the sequence of  
12  contributions as reported by this newspaper  
13  article. It reports a March 6, 1996 contribution  
14  of \$500, and then a letter from Mr. Torricelli to  
15  Mr. Cantor, and then another contribution of \$500  
16  on March 28, and then in September of that year,  
17  thousands of dollars, six or \$7,000 from yourself  
18  and your family.

19           Now, after the letter was sent by  
20  Mr. Torricelli to Mr. Cantor, if Mr. Torricelli had  
21  not sent that letter to Mr. Cantor, would you have

1 continued to contribute thousands of dollars to  
2 Mr. Torricelli's campaign?

3 A. You are asking me a hypothetical question.

4 I don't have any way to respond to that.

5 Q. Of course you do.

6 A. No, I don't. I don't know what I would  
7 have done.

8 Q. So, you refuse to answer that question.

9 A. I don't refuse to answer. I just don't  
10 know how to answer it.

11 Q. You have no idea whether you would  
12 continue to pay thousands of dollars to a  
13 politician who wasn't responsive to your requests?

14 A. Wait a minute. You say pay thousands of  
15 dollars to a politician. I take great exception to  
16 that. Stop that.

17 Q. I'll rephrase the question.

18 A. Don't put words in my mouth.

19 Q. I'll rephrase the question.

20 A. I am sorry, but he is impugning my  
21 personal--

1           PRESIDENT VEEDER: Mr. Dugan wasn't  
2 intending to do that.

3           THE WITNESS: I think he was.

4           MR. DUGAN: Well, I'll set the record  
5 straight. When I am talking about money to  
6 politicians, I'm talking about political  
7 contributions only. And I'm not talking about  
8 political contributions, I'll let you know. And if  
9 I stray from the record and don't use the precise  
10 term "political contributions," you can take it as  
11 my universal intent that I'm always talking about  
12 political contributions.

13          THE WITNESS: You are talking about legal  
14 political contributions?

15          MR. DUGAN: I'm talking about political  
16 contributions.

17          THE WITNESS: Well, I want it clarified  
18 that it is legal political contributions.

19          MR. DUGAN: That, I don't know. I'm sking  
20 about contributions.

21          THE WITNESS: I just clarified it for you.

1 BY MR. DUGAN:

2 Q. Let's go back to the timing. Are saying  
3 that you don't know whether you would continue to  
4 make thousands of dollars in political  
5 contributions to a politician who was nonresponsive  
6 to your specific request for help?

7 A. I don't know that because it depends upon  
8 what other agenda items I have with that particular  
9 individual.

10 Q. So you think--you are actually telling  
11 this Tribunal that you can think of times where you  
12 would continue to spend thousands of dollars for a  
13 politician that just refused to help you?

14 A. That is entirely likely. I have supported  
15 politicians in the past who have sometimes voted  
16 exactly opposite from the way I asked them to.  
17 That happens all the time.

18 Q. You say it is entirely likely you would  
19 continue to support them after they vote against  
20 you?

21 A. Sometimes you have to. Sometimes you have

1 to demonstrate that you are willing to support them  
2 because they are a good elected official, and then  
3 you try to lobby them in order to see if you cannot  
4 change their mind. Sometimes they are committee  
5 chairmen who are going to be there a long time, and  
6 it just takes that amount--you have to contribute  
7 to the campaign in order to have access to these  
8 politicians. Unfortunately, that is the American  
9 way of life. That is particularly the way of life  
10 in California from a political standpoint.

11 Q. But you were looking for more than access.

12 You were looking for help, weren't you?

13 A. I am not sure I understand what you are  
14 saying here.

15 Q. You were looking for help from  
16 Mr. Torricelli on your El Salvador?

17 A. I was looking for help from Mr. Torricelli  
18 on my problem in El Salvador; that is correct.

19 Q. And you were also looking for help from  
20 Mr. Torricelli on the ethanol fuel tax excise  
21 credit; correct?

1       A.    Yes, I believe so.  Is that what it says  
2 in the article?

3       Q.    I am asking you.  Did you ask him to--did  
4 you ever talk with him about the excise tax credit  
5 for ethanol?

6       A.    I don't remember.

7       Q.    You don't remember.  Do you remember  
8 whether he voted your way, voted ethanol's way with  
9 respect to the credit?

10      A.    I don't remember.

11      Q.    Let's read what it says here and see  
12 whether it refreshes your recollection.  This is at  
13 the bottom of page 1131, and it is talking about  
14 Senator Torricelli--it says:  Three votes is  
15 evidence of his long-time support for ethanol, but  
16 only one of those votes involved a bill that  
17 included a tax credit subsidy, and that vote was in  
18 favor of a sweeping national energy policy bill,  
19 that also dealt with nuclear power plants, electric  
20 utilities, and a host of other issues.  His Senate  
21 votes, his first that dealt solely with the tax

1 credit issue, were unusual for a New Jersey  
2 Senator. Senator Frank Lautenberg voted against  
3 the credit, and for years, Senator Torricelli's  
4 predecessor in the Senate, Bill Bradley, was known  
5 as a leading opponent of the credit accusing  
6 supporters of reaching deeper and deeper into the  
7 pockets of American taxpayers to benefit a handful  
8 of special interests.

9 Does that refresh your recollection in any  
10 way about your ability to turn around the Senator  
11 from New Jersey and get him to vote for the excise  
12 tax credit for ethanol?

13 A. I'm sorry, I don't understand what you  
14 mean by "turn around."

15 Q. It just said the Senator from New Jersey  
16 had not supported the tax credit and all of a  
17 sudden Senator Torricelli, after he receives  
18 contributions from you, does support the tax  
19 credit?

20 A. I have no way of knowing what  
21 Mr. Torricelli's reasoning was or the reason that

1 he decided to vote the way he did. I more than  
2 likely lobbied him on behalf of the ethanol  
3 industry, which would be a logical thing for me to  
4 do. Any time I have access to a political figure  
5 and they are willing to sit down and talk with me  
6 about it, I would have been consistent in my  
7 approach over the years to try to advocate the use  
8 of clean burning renewable fuels of which ethanol  
9 is a primary one.

10 Q. And you have been consistent in your  
11 attempts to use political support for those  
12 politicians who will support the expanded use of  
13 ethanol; correct?

14 A. Support ethanol and the expanded use of  
15 ethanol, that is correct.

16 Q. Now, if you turn to page 1327. Third and  
17 fourth paragraphs, (reading) We are a free country  
18 and I can go ahead and support anybody I want, Vind  
19 said. If I think a guy is going to be a bulldog  
20 and going to weigh in and going to support American  
21 businessmen in these Banana Republics, hell yes, I



1 will support him. But is there a quid pro quo?

2 Absolutely not.

3 What did you mean by "quid pro quo"?

4 A. The reporter asked me the same type of  
5 leading questions you're trying to ask me here  
6 which is to imply somehow that for \$500 I could buy  
7 off a U.S. Senator, which is total nonsense. What  
8 I am saying is that you get access if you are  
9 supporting those particular politicians, but there  
10 is never a quid pro quo. That is a crime. That is  
11 called bribery, and I don't do that, sir.

12 Q. But you were looking for help; correct?

13 A. You have asked me that probably six times.  
14 The answer is yes.

15 Q. And by "quid pro quo," you mean that there  
16 was no express agreement whereby you would receive  
17 help in exchange for your contribution; is that  
18 correct?

19 A. That is absolutely correct.

20 Q. Was there any implicit understanding?

21 A. Absolutely not.

1       Q.    Did you make any contributions to Governor  
2 Wilson?

3       A.    Yes, I did.

4       Q.    How much?

5       A.    I don't remember.

6       Q.    Now I would like to show you  
7 Mr. Listenberger's witness statement, and that  
8 is--I'm sorry, I don't have copies of that.

9 I am going to read you paragraph 2--

10           MR. LEGUM:  Would you mind holding off  
11 until we get a copy?

12           MR. DUGAN:  Sure.  Could you pull one out  
13 of your record.  I don't have them with me.

14           MR. LEGUM:  Do you want the witness to  
15 have a copy in front of him as well?

16           MR. DUGAN:  Please.  I can read it to him.  
17 I am going to read only one sentence.

18           PRESIDENT VEEDER:  We can lend him a copy  
19 from our files.  We are looking at our copy of  
20 Volume 13.

21           BY MR. DUGAN:

1 Q. Paragraph 2, the last sentence, (reading)

2 It was my understanding that the dinner was

3 arranged in order for me and others to meet

4 Mr. Davis, discuss his candidacy, and assess

5 whether to support his campaign.

6 You see that?

7 A. Yes.

8 Q. Was it your understanding that ADM had not

9 decided whether to support Mr. Davis at this time?

10 A. That is my understanding. Yes, that's

11 correct.

12 Q. Are you aware of the fact that after this

13 meeting took place ADM decided to contribute

14 hundreds of thousands of dollars to Mr. Davis?

15 A. I am aware that they decided to contribute

16 \$100,000.

17 Q. You are unaware of the contributions that

18 took place after that?

19 A. You'd have to refresh my recollection. I

20 don't know if there were others. I assume there

21 were.

1 Q. Yes, there were.

2 A. Okay.

3 Q. Now, you said in your witness statement  
4 that you worked with ADM to support various  
5 legislators and members of Congress whom you felt  
6 might support the expanded use of ethanol. Did  
7 Mr. Davis agree to support the expanded use of  
8 ethanol?

9 A. He was generally supportive of ethanol and  
10 had been over the years. In fact, going back to  
11 1981, when he was Chief of Staff to then-Governor  
12 Jerry Brown, Mr. Davis reminded me, years later,  
13 that he was the one who had urged the Governor to  
14 sign a bill that I had helped to draft and  
15 sponsored in the state of California that gave  
16 partial tax exemptions to ethanol blends with  
17 gasoline.

18 Q. At this dinner, at this meeting, was there  
19 any type of agreement, express or implicit, that he  
20 was going to agree to the expanded use of ethanol?

21 A. No, not at all. In fact--let me rephrase

1 that. Governor Davis, then-Lieutenant Governor  
2 Davis, came to me approximately one year prior to  
3 this dinner, this infamous dinner now, and asked me  
4 to support him in his run for Governor. It might  
5 have been less than a year, but within a year's  
6 time frame. He met me in my office and spent about  
7 three hours. At the time he was running very, very  
8 baldly in the polls, and my comment to him was, I  
9 am not going to support you. And he wore me down  
10 because he is a, as I say, very aggressive person,  
11 although he doesn't seem so when you see him on  
12 television.

13           He reminded me at the time that he had  
14 been fully supportive of the bill that I had  
15 sponsored in 1981, the one I previously mentioned,  
16 and also some three or four other bills that I had  
17 helped to draft and sponsored in the state of  
18 California that would do various things to promote  
19 the expanded use of ethanol. So the answer to that  
20 is that I agreed to go ahead and support him, and  
21 subsequent to that conversation, I believe through

1 one of his chief campaign staffers, they contacted  
2 me, and I don't recall whether it was Lieutenant  
3 Governor Davis himself or whether it was one of his  
4 staff people that said, could you arrange a meeting  
5 with the ADM folks. And I said, yes, I would. I  
6 said, what do you want to do? He said, can you  
7 raise money for us from ADM? And I said, I don't  
8 have no idea, but I will try to see if I can  
9 possibly set up a meeting and see what happens from  
10 there.

11 Q. And then you proceeded to raise quite a  
12 bit of money for Governor Davis; correct?

13 A. Yes.

14 Q. And then he proceeded to ban MTBE and  
15 substituted ethanol for MTBE; is that correct?

16 A. No, it's not correct. He did not  
17 substitute ethanol for MTBE. That was Federal law.

18 Q. All right, let's go to the portion of your  
19 witness statement where you talk about the  
20 documents. Now, first of all, have you talked with  
21 the State Department about any of the testimony

1 that was given yesterday with respect to the  
2 documents?

3 A. No.

4 Q. Have you reviewed any transcripts?

5 A. No.

6 Q. Have you talked with anyone else about  
7 what happened yesterday?

8 A. No.

9 Q. Paragraph 14 of your witness statement.  
10 You state that you realized that someone had broken  
11 into your office. How did you come to realize  
12 that?

13 A. When I was advised by the Department of  
14 State that a number of items of correspondence, my  
15 telephone message pads, my personal Palm Pilot  
16 address book, messages from my wife saying she is  
17 going to be late from work, messages from the rest  
18 home where my 98-year-old aunt was kept, these  
19 types of things, were made public as a horrible  
20 intrusion of my privacy, and then I became very  
21 concerned about where these records came from. My

1 initial thought was, well, maybe it is somebody in  
2 my office that turned on me somehow, but I only  
3 have four people--my son, myself, my controller,  
4 and supply and distribution manager--at the time.  
5 Both of those women had been with me for over 15  
6 years, so it was unlikely that anybody would have  
7 done that. So I eliminated that scenario, and then  
8 I started thinking, well, how could this possibly  
9 happen? And I will tell you that it was entirely  
10 possible because my landlord is the one responsible  
11 for--

12 Q. Excuse me--

13 A. I am answering your question.

14 Q. I asked how you came to realize it. You  
15 are giving a long narrative explanation.

16 A. Yes, I am because I began to realize--

17 Q. You said the State Department contacted  
18 you and told you they had your documents.

19 A. Wait a minute. You're not allowing me to  
20 answer the question.

21 PRESIDENT VEEDER: Mr. Dugan, let the



1 witness finish the answer.

2           THE WITNESS: This is very important,  
3 Mr. President, because the cleaning service that  
4 cleaned our office, which was leased space--and you  
5 have seen pictures of where the office was--was  
6 provided by the landlord. On more than one  
7 occasion, on a Saturday, I would go to that office  
8 to get something or do some work at my office. The  
9 door would be wide open. The cleaning people would  
10 leave the entrance to the office complex itself  
11 wide open and go down the hallway to clean other  
12 offices and other retail establishments, and I  
13 would walk into my office and I wouldn't see  
14 anybody for an hour. I would try to find them. I  
15 complained on numerous occasions, and had my people  
16 complain on numerous occasions about this breach of  
17 security to the landlord. It was not cleared up.  
18 It would have been absolutely a piece of cake for  
19 anybody to walk in there at nighttime or on a  
20 Saturday or Sunday, when the cleaning people were  
21 in there, and go in there and take anything they

1 wanted at any time.

2           And I want to clarify also, my original  
3 suspicion was that documents were copied and then  
4 put back in the file. That turns out not to be  
5 true. Documents were stolen, taken from my files,  
6 and I don't have them. They are not there today.

7           So, therefore, I contacted the Attorney  
8 General of the State of California, who I have  
9 known for a number of years, and I personally met  
10 with him and said, Mr. Lockyer, this is, in fact,  
11 really a problem, and he was aware of this case  
12 because he represents the State of California as  
13 the chief law enforcement officer.

14           And then I contacted my lawyer and asked  
15 that he contact the FBI because the Attorney  
16 General said to me in response to my question--I  
17 said if these stolen documents are used in  
18 interstate commerce, is that not a federal crime?  
19 And he said, yes, it is. I said, then is the  
20 agency that has privy over this the Federal Bureau  
21 of Investigation? And he said, yes, it would be,

1 and that is the reason I had my lawyer contact the  
2 FBI. But I got no response from them because by  
3 this time it is after 9/11 and they were so  
4 involved with terrorism things, they don't have the  
5 manpower to spare on what I call white collar  
6 crime.

7           It is a long answer, but it answered it.

8       Q.    You said you realized that someone had  
9 broken into your office?

10      A.    Well, I don't know what the legal term  
11 "breaking in" is, but I think if you enter an  
12 office building during off hours when there's  
13 nobody there and you're not supposed to be there, I  
14 think that is a break-in.

15      Q.    You mean entering your office?

16      A.    Absolutely.

17      Q.    Is that what happened?

18      A.    I am absolutely convinced of that.

19      Q.    Do you know that?

20      A.    Do I know that? No, but that is the only  
21 way they could have gotten these documents

1 themselves.

2 Q. Do you have any personal knowledge as to  
3 how it actually happened?

4 A. No, I don't know how it actually happened.  
5 I'm very curious. Perhaps your clients can tell  
6 me how it happened.

7 Q. You never filed a report with the local  
8 police, did you?

9 A. No, I did not.

10 Q. Why not if it was a break-in?

11 A. It wasn't a break-in per se, and it  
12 happened over I guess a period of almost a year,  
13 according to the record now, if I understand it.

14 Q. Why did you use the term "break-in"?

15 A. Because it is the most descriptive  
16 adjective I can use.

17 Q. It is a verb. But breaking in implies  
18 smashing and breaking, doesn't it?

19 A. Well, break in could be either way,  
20 whatever it is. Does it imply that? I'm not sure  
21 that's true.

1 Q. What did you mean. You said broke in.

2 What did they break?

3 A. They didn't break anything. They entered  
4 illegally.

5 Q. They didn't break in; is that correct?

6 A. That is your statement, not mine.

7 Q. So you are saying they did break in?

8 A. I don't know how they got access, my  
9 friend.

10 Q. You didn't have any hesitation saying they  
11 had broken in. And now you say you don't know how  
12 they got access.

13 A. I don't know exactly how they got in. I  
14 don't know whether that makes any difference or not  
15 if they got in there illegally.

16 Q. You submitted a sworn statement under  
17 perjury that they broke in, and now you are saying  
18 you don't know how they got in.

19 MR. LEGUM: Mr. President, Mr. Dugan is  
20 now badgering the witness. I think it's time for  
21 us to move on.

1           MR. DUGAN: I think this is a critical  
2 statement. He is accusing someone of committing a  
3 crime, and now he is saying he has no idea how it  
4 happened. This is a critical point.

5           PRESIDENT VEEDER: Just one moment. I  
6 think you have made your point, Mr. Dugan. I don't  
7 think you need to make it anymore.

8           BY MR. DUGAN:

9       Q. Did you ever complain to the landlord that  
10 the cleaning staff did it?

11      A. The cleaning staff did what?

12      Q. You say here that you suspect the cleaning  
13 staff had--someone had induced the cleaning service  
14 to grant them access to my office?

15      A. I said there were a couple of  
16 possibilities. One was they could have walked in  
17 by themselves, they could have induced the cleaning  
18 people to either give them access or give them a  
19 key, and the alarm code. There are a variety of  
20 ways that someone can do a black-bag job on an  
21 office if they want to. I am not skilled enough in

1 that area of the law to be able to determine how  
2 they did it. All I know is that someone got in  
3 there and stole my records out of my files.

4 Q. What is a black-bag job?

5 A. That is just a term of art, I guess,  
6 meaning someone goes in and takes stuff without  
7 leaving a record of when they were there or who  
8 they were.

9 Q. Someone goes into your office and takes  
10 stuff. Is that what you're talking about?

11 A. Somebody goes into my office--they  
12 physically had to go through my office itself,  
13 through a door into an area that contained the  
14 filing cabinets and open the drawers and take the  
15 documents out. The number one missing documents  
16 are correspondence between myself and Archer  
17 Daniels Midland Company, specifically the Chairman,  
18 Mr. Dwayne Andreas, with whom I had a longstanding  
19 professional and business relationship.

20 Q. You are saying that is what they did, they  
21 went in and took those, copies of those letters out

1 of your files?

2 A. That is the only thing I--that's the only  
3 logical answer to it.

4 Q. You don't have any personal knowledge of  
5 that, though?

6 A. You have asked me that before. No, I do  
7 not.

8 Q. Did you ever throw documents out?

9 A. Yes, I do throw documents out.

10 Q. Do you use a shredder?

11 A. We do use a shredder.

12 Q. Have you always used a shredder?

13 A. No, we have not always used a shredder.

14 Q. When did you start using a shredder?

15 A. After we moved offices in probably January  
16 of 2001.

17 Q. And when you threw the documents out,  
18 where did you throw them?

19 A. We took a number of documents, my son and  
20 I, in a truck and hauled some of these--you call  
21 them documents. We are talking about business



1 correspondence, we are talking about invoices and  
2 things that are beyond the statutory requirement  
3 for recordkeeping, and we would take them in their  
4 cardboard filing boxes and haul them up to the Brea  
5 dump, which is about six or eight miles away and  
6 personally toss them into the trash.

7           But I want to reiterate, there is no  
8 reasonable explanation for me to take  
9 correspondence between myself and the Chairman of  
10 Archer Daniels Midland and take those and throw  
11 them away. If I understand the time period here,  
12 that correspondence was only three or four years  
13 old. That is illogical for me to do that.

14       Q. Do you throw documents out of the office  
15 on a daily basis when you are working?

16       A. First of all, I am not working now. Did I  
17 throw documents on a daily basis? Not file copies,  
18 no, sir.

19       Q. Did you throw trash away on a regular  
20 basis?

21       A. Yes, of course.

1       Q.    Did you throw things away like message  
2 books?

3       A.    No.

4       Q.    No?

5       A.    No.

6       Q.    You never threw them away.  So your office  
7 is filled with those telephone message books--

8       A.    I'm sorry, I thought you were talking  
9 about my address books.  No, the message books  
10 would be thrown away after about a year or so.

11      Q.    Is your address book on your Palm Pilot  
12 you said?

13      A.    It is, correct.

14      Q.    Have you ever printed that out?

15      A.    Yes, I did.

16      Q.    What did you do with the printed copies?

17      A.    I kept one printed copy on my desk so that  
18 I wouldn't have to worry about whether I'd hot  
19 synch my Palm Pilot to my desktop because my  
20 desktop was crashing.  So, I printed out the  
21 address book and kept it for ready reference.  It

1 is hard to read those on the small little screen on  
2 the Palm Pilot, and my batteries would always run  
3 down.

4 Q. After you updated it, what did you do with  
5 the hard copy?

6 A. I didn't update it. I believe I only made  
7 one.

8 Q. Only made one?

9 A. I believe so.

10 Q. Did there come a time when you noticed  
11 that hard copy was missing?

12 A. No, not really.

13 Q. It was always sitting on your desk?

14 A. Yes, it was sitting on my desk, but I  
15 didn't refer to it all the time.

16 Q. Is it still there?

17 A. No. I am not there.

18 Q. Was it still there when you left?

19 A. No.

20 Q. But you don't recall any time when it went  
21 missing?

1       A.    No, I sure don't.

2       Q.    And you don't recall any time when you  
3   threw it out?

4       A.    I do not.

5       Q.    I would like to show you the declaration  
6   of a woman by the name of Claire Noelle Morriset.

7           MR. LEGUM:  While you are doing that, we  
8   have been going for about an hour now.  It might be  
9   convenient to take a coffee break in the next half  
10  hour or so.

11           (Pause.)

12           THE WITNESS:  All right.  I have read it.

13           BY MR. DUGAN:

14       Q.    Now, Mr. Vind, those pictures that you  
15  brought with you today or last night or whenever  
16  you came here, why did you take those pictures?

17       A.    Because I wanted to point out to the  
18  Tribunal the fact that even if some of these  
19  documents were obtained through going through the  
20  trash, it is not on public property.  It is behind  
21  closed doors.  I had every expectation that

1 anything I would throw out would go immediately to  
2 the licensed waste disposal contractor and be  
3 disposed of in a proper manner, not pilfered by  
4 illegal means.

5 Q. So, did the State Department tell you that  
6 there was testimony in the record that your  
7 documents had been obtained from documents you  
8 discarded?

9 A. I read the--Mr. Puglisi's deposition here  
10 some time ago.

11 Q. His deposition or his statement?

12 A. His statement, I guess it is.

13 Q. Let's go back again to your trash disposal  
14 practices. On a daily basis when you were working  
15 say in 1997, '98, '99, 2000, did you at the end of  
16 the day throw out your documents? Did your staff  
17 throw out your documents?

18 A. I am not sure I know what you mean by  
19 "documents." That is certainly too broad. What  
20 are you asking me?

21 Q. Did you put documents in the trash can?

1       A.    Did I put documents in the trash can? No,  
2 I would probably throw away drafts or working  
3 copies or some other types of things, but I want to  
4 clarify, that the procedure was--and I clarified  
5 this with my secretary who worked for me during  
6 this time. I called her last week to be certain  
7 that I was going to give you accurate testimony.

8           The procedure was for her to type up on  
9 her computer a memo or a letter. Then I would  
10 review it and sometimes make corrections, and that  
11 particular corrected copy would be, of course,  
12 thrown away, but then she would type up the  
13 finished article, finished correspondence. I would  
14 sign it, either Richard B. Vind or Dick or whatever  
15 I would put on there. She would then make a copy  
16 of that, sometimes two copies. One copy would go,  
17 for example, if it were a letter to Mr. Dwayne  
18 Andreas, the file copy would go in the ADM file.  
19 That was it. The original, of course, would be  
20 sent to Mr. Andreas.

21       Q.    And there were never any excess copies

1 made?

2       A.   Sometimes there would be an extra copy  
3 made if there was a subfile. For example, if I was  
4 communicating with Mr. Andreas on some matter such  
5 as the lawsuit I filed against the State of  
6 California, the California EPA, then a copy would  
7 be put in the--probably put in the EPA file. That  
8 is correct.

9       Q.   So drafts would go in the trash for sure?

10      A.   Drafts would more than likely go--that is  
11 absolutely correct.

12      Q.   So, you don't have any doubt that the  
13 drafts that were in the documents that you saw  
14 could have been recovered from your trash?

15      A.   I don't have any question about that.  
16 There were some things that were obviously--drafts  
17 that were corrected by my son, for example. There  
18 were some things I gave him that he would probably  
19 throw in the trash. That's correct.

20      Q.   Or your telephone message book, for  
21 example?

1       A.    Not my message book.

2       Q.    The telephone message book where all the  
3 message slips had already been filled out and you  
4 had to buy a new telephone message book?

5       A.    It was the practice to keep them for a  
6 protracted period of time, but not for years.  
7 Sometimes it was my practice to say, can you get  
8 the phone number off of that of so and so who  
9 called six months ago, and I don't have it written  
10 down or you don't have it. So she would go back  
11 through. That is a standard practice, yes.

12      Q.    So you would keep it for six months or so?  
13 That's all?

14      A.    I don't know, six months, a year, could be  
15 two years. We had three or four of them going at  
16 any one time because more than one person answered  
17 the phones in the office at that time. There were  
18 five people total in the office complex.

19      Q.    But it is your testimony that other than  
20 drafts, nothing got thrown away?

21      A.    No, I didn't say that. I said that the



1 telephone message pads would be thrown away at some  
2 point, but I couldn't tell you how long they were  
3 kept there.

4 Q. And perhaps you have a different  
5 understanding, but my understanding in most offices  
6 is that trash cans fill up with documents on a  
7 regular basis. That didn't happen in your office?

8 A. We are a very small office.

9 Q. And nothing went into the trash in the way  
10 of documents unless it was a draft; is that right?

11 A. That is generally true. That is a correct  
12 statement.

13 Q. And you are certain of that?

14 A. Am I certain to that? I am not saying 100  
15 percent of the time. I can't speak for my people  
16 100 percent of the time. But the practice was just  
17 as I described it.

18 Q. Did you ever look in the trash cans? Do  
19 you have any idea what was in the trash cans?

20 A. No, I am not used to rummaging through  
21 trash cans, Mr. Dugan.

1 Q. So you have no personal knowledge of what  
2 was thrown out?

3 A. Yes, of course I have personal knowledge  
4 of what was thrown out in my trash container,  
5 because I put it there.

6 Q. Your secretary didn't put anything there,  
7 your son didn't put anything there?

8 A. In their own.

9 Q. In their own. So they threw those out;  
10 correct? Those were Regent International documents  
11 that they threw out?

12 A. They did not throw them out. You're using  
13 an incorrect statement. They put them there in  
14 order for the cleaning people to then put them into  
15 a trash bag and tie it up and carry it down to the  
16 closed trash disposal area directly below my  
17 office. Yes, that is correct.

18 Q. So they threw them out?

19 A. No, they didn't throw them out.

20 Q. What verb would you use?

21 PRESIDENT VEEDER: Mr. Dugan, I think we

1 are playing with words.

2 BY MR. DUGAN:

3 Q. Now, you talked about the closed trash  
4 area. Was that area locked?

5 A. It was supposed to be locked. I think in  
6 practice, the cleaning people being as lax as they  
7 were, did not keep it locked at all times.

8 Q. So anybody could have walked in and opened  
9 the doors?

10 A. It was unmarked. They'd have to know what  
11 was in there.

12 Q. But they could have walked in?

13 A. Walked in? I guess so.

14 Q. It was adjacent to a no parking area; is  
15 that right?

16 A. No, it is not. That is not correct.

17 Q. What is right in front of it?

18 A. Right in front of it is an area where a  
19 trash truck was designed so the trash truck could  
20 back up in there and unload the dumpster. I  
21 believe the practice was to roll the dumpster out,

1 and then the trash truck could pick it up, which in  
2 the U.S. that's how they do it and toss it all in  
3 the trash truck.

4 Q. Was it only your trash that was in that  
5 dumpster or was there trash from other tenants?

6 A. Trash from other tenants. There were one,  
7 two, three, four, maybe five other tenants in the  
8 office complex.

9 Q. I believe you said it was a common area  
10 and so everyone's trash went in there?

11 A. That is correct. We all paid the common  
12 area charges for that trash area. That's correct.

13 Q. And the area in front, where the trash  
14 truck came, I mean, that is a publicly accessible  
15 area, the public can walk all around there if they  
16 want; correct?

17 A. You can, if you want to.

18 MR. DUGAN: I have no further questions.

19 MR. LEGUM: Can we have five minutes?

20 PRESIDENT VEEDER: Of course. Mr. Vind,  
21 we are going to break for five minutes. We say

1 this to all witnesses. We ask witnesses not to  
2 discuss their evidence away from the Tribunal. For  
3 the next five minutes, please don't discuss this  
4 case with anybody. Talk about the weather, but not  
5 about this case.

6 THE WITNESS: I don't want to talk about  
7 the weather outside right now.

8 PRESIDENT VEEDER: We will break for five  
9 minutes.

10 (Recess.)

11 MR. DUGAN: I have one more series of  
12 questions pursuant to my agreement with The  
13 Tribunal.

14 (Brief recess.)

15 PRESIDENT VEEDER: Yes.

16 BY MR. DUGAN:

17 Q. Does it continue to be your testimony that  
18 someone broke into your office to obtain these  
19 documents?

20 A. Perhaps a better term would be "illegally  
21 enter my office."

1       Q.    But it is your testimony that someone  
2 actually illegally entered your office.  You are  
3 saying that as a matter of fact is what happened?

4       A.    No, that is not what I testified to.  I  
5 took great pains in explaining to you that is my  
6 best judgment, that is the only thing I can figure  
7 out as to the way someone got file copies out of my  
8 files.

9       Q.    So it is just a guess?

10      A.    It is a guess.

11           MR. DUGAN:  No further questions.

12           PRESIDENT VEEDER:  Mr. Legum, do you have  
13 any questions?

14           MR. LEGUM:  I do.  Just a few.  
15 Just off the record.

16           PRESIDENT VEEDER:  It is difficult to be  
17 off the record.

18           MR. LEGUM:  Is it worth taking the time  
19 for Mr. Vind to look at X11 and X12?

20           PRESIDENT VEEDER:  It is entirely up to  
21 you.

1 REDIRECT EXAMINATION

2 BY MR. LEGUM:

3 Q. First some administerial matters I should  
4 have taken care of before. To your left--sorry, to  
5 your right, you have some documents. Can you first  
6 take the photographs--what are the exhibit numbers  
7 at the bottom?

8 A. X8, X9, X10.

9 Q. Is that your handwriting at the bottom of  
10 those?

11 A. My signature and the date.

12 Q. And the date is 6/6/04?

13 A. That is correct.

14 Q. What does that date signify?

15 A. That is the date I took the photographs.

16 Q. Can you look at the satellite  
17 photographs--

18 A. Are you referring to X11 and X12?

19 Q. I believe I am. Are those to the best of  
20 your understanding and knowledge, are those  
21 satellite photographs of the area where your office

1 was located?

2 A. Yes, they are.

3 Q. Under examination from Mr. Dugan you  
4 referred to a conversation with then-Lieutenant  
5 Governor Davis concerning ethanol and MTBE. Do you  
6 remember that testimony?

7 A. I do remember the testimony, yes.

8 Q. Was that conversation with Lieutenant  
9 Governor Davis at the dinner on August 4, 1998?

10 A. No, it was not.

11 Q. Where did that conversation take place?

12 A. That conversation took place in my office  
13 when he approached me to support him in his run for  
14 the governorship.

15 Q. Now, under examination by Mr. Dugan, you  
16 testified that you supported politicians who  
17 supported ethanol, and that politicians--sorry, do  
18 you recall that testimony?

19 A. I do.

20 Q. Did politicians always respond to your  
21 support by supporting ethanol?



1       A.    No, they did not.

2       Q.    With respect to Governor Davis after he  
3   went into office, you are aware that he signed an  
4   Executive Order that postponed the effective date  
5   of the MTBE ban by one year, are you?

6       A.    Yes, I am.

7       Q.    Did that action benefit ethanol?

8       A.    No, it did not.

9       Q.    Was that action beneficial for your  
10   company?

11      A.    It was not.

12      Q.    Are you aware that Governor Davis and the  
13   California government during his administration  
14   requested an oxygenate--a waiver of the federal  
15   oxygenate requirement?

16      A.    I am very much aware of it, yes.

17      Q.    Did that action benefit ethanol?

18      A.    No, it did not.

19           MR. DUGAN:  Can I object for a second.  
20   This wasn't covered in cross-examination, I don't  
21   think.

1           PRESIDENT VEEDER: Mr. Legum, how does  
2 that come out of the cross-examination?

3           MR. LEGUM: Mr. Legum.  
4 Mr. Dugan, through his questions, suggested that  
5 every time a political contribution was made to a  
6 politician, and every time someone supported a  
7 politician, that politician acted in accordance  
8 with that person's interests, and I am simply  
9 responding to that. That is my final question.

10          MR. DUGAN: That is much too broad an  
11 interpretation of cross.

12          PRESIDENT VEEDER: We will allow the  
13 question.

14          BY MR. LEGUM:

15       Q. Mr. Vind, do you remember the question  
16 concerning the oxygenate waiver?

17       A. Would you repeat it for me, please?

18       Q. You recall that Governor Davis during his  
19 administration requested a waiver of the oxygenate  
20 requirement from the U.S. Environmental Protection  
21 Administration?

1       A.    Yes.

2       Q.    Did that action benefit ethanol?

3       A.    It did not benefit ethanol.

4       Q.    Did that action benefit your company?

5       A.    It did not benefit my company.

6       Q.    One final question, on the airplane from  
7 Meg's Field to Decatur, where on the airplane were  
8 you sitting in relationship to Lieutenant Governor  
9 Davis?

10      A.    Lieutenant Governor Davis was sitting in  
11 the chairman's seat, which is the back right seat,  
12 and I was sitting across the aisle from him. It  
13 was club seating, four seats.

14      Q.    Were you positioned so you could have a  
15 conversation with him?

16      A.    A brief conversation because the weather  
17 was so bad that Lieutenant Governor Davis basically  
18 locked up on me and went catatonic, and I guess he  
19 is a very nervous flier, and we had a brief  
20 conversation because there was all kinds of  
21 weather--the plane was bouncing around, and so,

1 yes, we had a brief conversation, yes.

2 MR. LEGUM: I have no further questions.

3 Thank you very much.

4 PRESIDENT VEEDER: We have no questions

5 from the Tribunal at this stage, but just wait

6 there for a moment. We have to come back to

7 Mr. Dugan.

8 Mr. Dugan, you have finished your

9 cross-examination without reference to the Regent

10 International documentation. What do you propose

11 we do next?

12 MR. DUGAN: I propose tomorrow morning we

13 revisit the issue of the Regent International

14 documents.

15 PRESIDENT VEEDER: You will not be

16 submitting those documents to Mr. Vind because he

17 will now conclude his testimony. Do you want five

18 minutes to think about this?

19 MR. DUGAN: I would, yes, please.

20 THE WITNESS: I am not going to be here

21 tomorrow.

1           PRESIDENT VEEDER: This is what we  
2 appreciate which is why we try to sort things out  
3 now. We were told you are on a 9:00 flight, so you  
4 have to leave here before 7, effectively.

5           THE WITNESS: Yes.

6           PRESIDENT VEEDER: Why don't we take a  
7 ten-minute break. I am sorry we have to keep you  
8 here, but during this break, please don't discuss  
9 your evidence.

10          MR. DUGAN: Actually, I think we can--if,  
11 after the argument tomorrow, if I am able to use  
12 the documents, it will be for a very short period,  
13 and I will make it subject to trying to work out an  
14 arrangement where we can do it by phone or by video  
15 conference, if that is acceptable.

16          PRESIDENT VEEDER: When you say by phone  
17 or video conference, with what witness?

18          MR. DUGAN: Mr. Vind.

19          PRESIDENT VEEDER: Mr. Legum?

20          (Pause.)

21          MR. LEGUM: Our view is it is not fair to

1 Mr. Vind for him to be subject to further  
2 examination at some indeterminate period of time.  
3 He has come all the way out here to testify, he is  
4 here, he has waited here all day long. Therefore,  
5 we would suggest that if Mr. Dugan wants to examine  
6 him further, he should get it over with tonight  
7 before he has to catch a plane.

8 PRESIDENT VEEDER: Mr. Vind, I am sorry to  
9 ask you to do this, and please don't take offense,  
10 but it may be easier if we could talk to counsel in  
11 your absence. If you would just leave the room for  
12 a few minutes but don't disappear. If you could  
13 make sure you can come back so we will tell you  
14 what the result of this is. Maybe we can speak  
15 more openly with counsel.

16 (The witness leaves room.)

17 PRESIDENT VEEDER: Mr. Dugan, how do you  
18 see this going forward, this debate on the United  
19 States's motion--are you ready to address this now?

20 MR. DUGAN: No, I am not ready to address  
21 it now, bearing in mind it bears on evidence that

1 was just presented today for the first time, and an  
2 argument was presented today for the first time,  
3 and I don't think it would be fair to resolve the  
4 U.S. objection until we have had adequate time to  
5 consider it and respond to it.

6 Now, that said, if we are to use the Vind  
7 documents to cross-examine Mr. Vind, it can't be  
8 done until after the ruling, and I don't see any  
9 way to get the ruling before tomorrow. It seems as  
10 a matter of equity to us, especially since this is  
11 caused by the very, very last minute introduction  
12 of evidence by the United States--

13 PRESIDENT VEEDER: Keep it at a level of  
14 practicality.

15 MR. DUGAN: We ought to work out some type  
16 of contingent arrangement so that if the documents  
17 are admitted for purposes of cross-examination, for  
18 example, we can have some type of supplemental  
19 procedure or video or telephone procedure, like we  
20 accommodated for Mr. Weinstein and Mr. Miller.

21 PRESIDENT VEEDER: Pushing you a little

1 bit further, what do you intend to do tomorrow, do  
2 you intend to call further evidence or is it  
3 limited to argument?

4 MR. DUGAN: There may be some  
5 photographs--there will be some photographs but  
6 that is it, and for the most part, it will be  
7 limited to further argument but for the  
8 photographs.

9 PRESIDENT VEEDER: On your current  
10 expectations, can we start at 9:00 or 9:30?

11 MR. DUGAN: Yes. We can start at 9:00, if  
12 you would like.

13 PRESIDENT VEEDER: Again, your current  
14 expectation, if you are entitled to put certain of  
15 the disputed documents to Mr. Vind by telephone or  
16 video link, you say "fairly short." What are you  
17 talking about?

18 MR. DUGAN: Fifteen minutes.

19 MR. LEGUM: The Tribunal will recall that  
20 by our second letter of April 23, 2004, the United  
21 States proposed a briefing schedule on this motion,



1 this motion to exclude this evidence that provided  
2 for an initial submission, a responsive submission,  
3 a reply and a rejoinder that would have had this  
4 issue fully briefed and submitted weeks before the  
5 hearing started. Methanex, for whatever reason,  
6 decided that it did not want to have full briefing  
7 on the issue, and, therefore, it decided that it  
8 would simply leave the issue to be addressed in a  
9 more hasty fashion at the hearing. It is, at least  
10 in our view, as a result of that decision on  
11 Methanex's part, that we find ourselves addressing  
12 and spending so much of our time at this hearing on  
13 this issue.

14 PRESIDENT VEEDER: It may be the  
15 Tribunal's decision that you are criticizing, Mr.  
16 Legum, because it was our decision not to decide  
17 the point before the hearing started.

18 Let's take a level of practicality.  
19 Obviously it would be quite improper to ask  
20 Mr. Vind to stand by the telephone or video link  
21 tomorrow. He is taking the red eye back to Los

1 Angeles, so tomorrow is out. But do you know about  
2 his movements next week, Monday or Tuesday?

3 MR. LEGUM: I know his wife is having  
4 surgery next week. I don't know what date that is.

5 PRESIDENT VEEDER: I don't think we can  
6 do anything more but conclude Mr. Vind's evidence  
7 today. We will hear argument tomorrow on the U.S.  
8 motion and we will start early, if that is  
9 acceptable to my colleagues and the parties, with  
10 your response, and we will have to make a ruling as  
11 soon as we can, about the disputed documents, and  
12 then we will hear an application from you, if we  
13 allow you to make use of these documents, an  
14 application to cross-examine further Mr. Vind by  
15 telephone or videolink, but there may be some  
16 practical difficulties given what Mr. Legum has  
17 just said. That is all we can do. For the time  
18 being, if we can have Mr. Vind back, we can  
19 conclude this part of his testimony, at least.

20 (The witness returns to the room.)

21 PRESIDENT VEEDER: Mr. Vind, we have come

1 to the end, at least of this part of your  
2 testimony. So we want to thank you for coming  
3 today, and we wish you a safer trip back to Los  
4 Angeles than the flight you have been describing.  
5 It is possible that a request will be made to see  
6 if you could answer further questions, but an  
7 approach will be made through the U.S. State  
8 Department, and it won't be in person; it will be  
9 by telephone or some other arrangement which won't  
10 require you to come back to Washington, D.C., but  
11 thank you very much for coming today.

12           There is one thing we have to discuss,  
13 which we will have to discuss when Mr. Vind leaves  
14 the room.

15           The terms of our Order made yesterday,  
16 covered the period up to the time when Mr. Vind  
17 began his evidence. Given that, Mr. Dugan, you  
18 haven't put the documentation to Mr. Vind, we  
19 wonder whether we should be doing something about  
20 amending that Order.

21           MR. DUGAN: Are you talking about the

1   Embargo Order?

2               PRESIDENT VEEDER:   Wasn't going to call it  
3   the Embargo Order but it is the Embargo Order.

4               MR. DUGAN:   I don't have any objection to  
5   terminating the Embargo Order at this point.

6               MR. LEGUM:   No objection here.

7               PRESIDENT VEEDER:   It is not a question of  
8   terminating the Embargo Order.   The Order stands  
9   but in accordance with its terms, it changed the  
10   minute Mr. Vind began his evidence.

11   Unless there is something else somebody wanted to  
12   raise, we will start tomorrow morning at 9:00.

13              MR. LEGUM:   Fine with us.

14              PRESIDENT VEEDER:   Before we depart, why  
15   don't we go through the schedule after the argument  
16   tomorrow.

17              Mr. Dugan, you will take a certain amount  
18   of time, but take your time, it is an important  
19   issue.   There will be a response from the United  
20   States.   Assume we are through that by 11:00, can  
21   we go through the timetable tomorrow?

1           MR. DUGAN: We have two experts to  
2 cross-examine tomorrow, Fogg and Happel, and I  
3 assumed it would be one before lunch and one after  
4 lunch. I don't think that the examinations are  
5 intended to be particularly lengthy. It is my  
6 understanding from my partner, Ms. Callaway, that  
7 we should have no trouble finishing by--certainly  
8 by 5:30, and probably well before then.

9           MS. MENAKER: Excuse me, if I may, I  
10 believe that Mr. Simeroth is also scheduled for  
11 tomorrow.

12          MR. DUGAN: I don't think--that may push  
13 us to 5:30, but I don't think beyond that.

14          PRESIDENT VEEDER: Anything else?

15          MR. LEGUM: Not here.

16          PRESIDENT VEEDER: Thank you very much.  
17 Until 9:00 tomorrow.

18                 (Whereupon, at 5:53 p.m., the hearing was  
19 adjourned until the following day.)

20

21

1 CERTIFICATE OF REPORTER

2

3 I, David A. Kasdan, RDR-CRR, Court  
4 Reporter, do hereby testify that the foregoing  
5 proceedings were stenographically recorded by me  
6 and thereafter reduced to typewritten form by  
7 computer-assisted transcription under my direction  
8 and supervision; and that the foregoing transcript  
9 is a true record and accurate record of the  
10 proceedings.

11 I further certify that I am neither  
12 counsel for, related to, nor employed by any of the  
13 parties to this action in this proceeding, nor  
14 financially or otherwise interested in the outcome  
15 of this litigation.

16

17 DAVID A. KASDAN, RDR-CRR

18

19

20

21

## 1 CERTIFICATE OF REPORTER

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3 I, Cathy Jardim, RPR, Court Reporter, do  
4 hereby testify that the foregoing proceedings were  
5 stenographically recorded by me and thereafter  
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8 and that the foregoing transcript is a true record  
9 and accurate record of the proceedings.

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11 counsel for, related to, nor employed by any of the  
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14 of this litigation.

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16 \_\_\_\_\_  
CATHY JARDIM, RPR

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